



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 608 OF 2005

Ibrahimkhan S/o. Alikhan Pathan,
Age : 49 years, Occu. : Service,
R/o. Majalgaon, Tq. Majalgaon,
Dist. Beed.

... Appellant

Versus

The State of Maharashtra

... Respondent

...
Mr. R. G. Hange, Advocate for Appellant.
Mrs. Chaitali Chaudhari – Kutti, APP for Respondent - State
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 09 SEPTEMBER, 2024

PRONOUNCED ON : 01 OCTOBER, 2024

JUDGMENT :

1. Appellant takes exception to the judgment and order dated 29.07.2005 passed by learned Additional Sessions Judge, Majalgaon, Dist.Beed in Sessions Case No. 27 of 2004, thereby rendering judgment of conviction for offence punishable under section 498-A of IPC.

FACTS GIVING RISE TO SESSIONS TRIAL

2. Deceased Mehrunissa was married to appellant. In spite of cohabitation and long married life, she did not conceive. Dissatisfied by the same, appellant accused under influence of liquor used to pick up quarrel and expressed his desire to perform

second marriage. He even suspected her fidelity. He insisted her to mutate immovable property in his name. Mehrunissa intimated about it to her family members and relatives. Getting fed up of ill treatment, finally on 19.12.2001, she immolated herself and was taken to the hospital, where she given dying declarations, which was made basis of registration of crime.

Investigation machinery swung into action and commenced investigation. Unfortunately, Mehrunissa succumbed to 93% burns on 21.12.2001. Offence under section 302 IPC was added to earlier offence of 498-A IPC and after investigation appellant was charge-sheeted and ultimately tried before Additional Sessions Judge, Majalgaon, Dist. Beed, who recorded evidence of in all 15 witnesses and on appreciating oral and documentary evidence, rendered judgment on 29.07.2005 accepting case of prosecution, but only to the extent of charge under section 498-A IPC and acquitted him from charge under section 302 IPC.

3. Against above judgment, instant appeal has been preferred on various grounds raised in appeal memo.

STATUS AND ROLE OF PROSECUTION WITNESSES

4. The prosecution has examined following 15 witnesses in support of its case. Their role and status is as under :

PW1 Ganesh is neighbour of accused and deceased.

PW2 Parvatibai is also a neighbour and an acquaintance of both deceased and appellant.

PW3 Dr. Dattatraya Pargaonkar, Medical Officer, who treated PW4 Jagannath and issued certificate Exh.20.

PW4 Jagannath is the landlord of accused and deceased.

PW5 Dr. Shriram Chavan, Autopsy Surgeon, who drew post mortem and issued opinion about cause of death.

PW6 Dnyaneshwar is pancha to spot panchanama Exh.28.

PW7 Mohammad is the brother of deceased.

PW8 Ganpat Yedke, Naib Tahsildar, who recorded dying declaration Exh.32.

PW9 A.S.I. Kalyankar, who recorded dying declaration Exh.34.

PW10 PHC Nanekar, who recorded dying declaration Exh.36.

PW11 Dr. Kailas Paithankar, who gave certificate of fitness to give dying declaration.

PW12 Dr. Kailas Dudhal, Civil Surgeon, who examined deceased in hospital.

PW13 Mohd. Muntojoddin is brother-in-law of deceased.

PW14 Manisha is a staff nurse posted at Civil Hospital, Beed.

PW15 P.S.I. Nakhate, Investigating Officer, who carried out investigation and charge-sheeted accused.

DEFENCE EVIDENCE

5. DW1 Dr. Vinod Ostwal claims that, he was attached District Hospital, Beed as Medical Officer. On 19.12.2001, patient by name Mehrunissa was referred by Rural Hospital, Majalgaon for treatment of burns and was admitted in the hospital at Beed at about 10:00 p.m. He clinically examined her and found her to be conscious condition and oriented and cooperative. Initially, on asking **patient Mehrunissa stated the history of accidental burns.** He noted down all these facts on the admission case paper and then admitted her. He identified case papers at Exh.62.

6. On appreciating above evidence, learned trial Judge acquitted accused from charge of 302 IPC, but convicted him under section 498-A IPC and sentenced him to suffer three years imprisonment.

SUBMISSIONS

On behalf of appellant : -

7. Challenging the impugned findings and judgment,

learned counsel for appellant submits that, prosecution has miserably failed to establish the charge under section 498-A IPC. According to him, necessary ingredients of cruelty as contemplated under law, are not available in the prosecution evidence. He submitted that, general allegations are made that there used to be frequent quarrels between husband and wife for not bearing child. According to him, most of the witnesses examined, are neighbours and some of them even does not know the cause of quarrels. He further submitted that, there are also allegations that, husband intended to perform second marriage as Mehrunissa did no conceive and it is further allegation that accused was seeking permission of deceased wife to perform second marriage, but according to learned counsel, being a Muslim, husband was permitted three marriages, and therefore, there is no question of insisting for consent.

8. As regard to allegation of seeking transfer of property, he submitted that, he himself has land in his name, and therefore, there was no need or question to seek her signature to transfer the land. Therefore, he submits that all allegations are without any foundation and base. That, trial Judge has already acquitted him from charge under section 302 IPC. That, there are multiple dying declarations, but same are not consistent, reliable and voluntary.

Taking this court through the impugned judgment, learned counsel pointed out that, in paragraph no. 35, learned trial Judge has recorded a finding that, there is confusion whether death of Mehrunissa was accidental, suicidal or homicidal and therefore according to him, with such finding, guilt for 498-A IPC ought not to have been recorded. He further pointed out that, even when it was not a case of prosecution that husband suspected fidelity and beat her, finding to that extent has been written in paragraph no. 45 of the judgment. On this count, he seeks reliance on judgments of Hon'ble Apex Court in the case of *Girdhar Shankar Tawade v. State of Maharashtra*, AIR 2002 SC 2078 and *Gananath Pattnaik v. State of Orissa*, 2002 (2) SCC 619.

For above reasons, he questions the findings and conclusion reached at by learned trial Judge and prays to set aside the same on the ground that there is complete improper appreciation of evidence and failure to apply settled law.

On behalf of Respondent – State :-

9. Opposing the above submissions, learned APP would point out that, here, there is overwhelming, clinching and convincing evidence on behalf of prosecution in trial court. Learned APP submitted that, as many as 15 witnesses are

examined. She pointed out that, except brother-in-law rest all witnesses are neighbours and were thus independent witnesses and moreover, they were witnesses to the quarrels and ill treatment. All neighbours consistently deposed to that extent. It is pointed out that, there was cruelty on three counts i.e. *firstly*, not bearing child; *secondly*, therefore intending to perform second marriage and *thirdly*, seeking her signature for transfer of immovable property in his name. Learned APP pointed out that, it has come in the evidence of witnesses that under influence of liquor, husband picked up quarrel and subjected her to both, mental and physical cruelty. Therefore, according to her, it is incorrect on the part of appellant to submit that, there is no evidence on the point of section 498-A IPC. She would strenuously submit that after the episode of burns, neighbors who shifted her to the hospital, were all informed by deceased that she was set to fire by husband. That, immediately prior to the episode, husband was present in the house and he had indulged in quarrels. That, neighbours, who are witnesses speak about appellant to be present, but acted as mute spectator and did not douse the fire and attempted to save her. Consequently, it is her submission that, above evidence is correctly appreciated by learned trial Judge and as such, according to her, there is no infirmity or error on the part of trial Judge in returning guilt.

ANALYSIS

10. There being charge for offence as well as conviction recorded under section 498-A IPC, at the outset, its essential requirements are reproduced as under :-

- “(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.”*

11. Law on the point of 498A of IPC is dealt in plethora of judgments.

As to what actually constitutes cruelty has been lucidly succinctly and time and again dealt in numerous cases like ***Giridhar Shankar Tawade v. State of Maharashtra*** (2002) 5 SCC 177, ***Gurnaib Singh v. State of Punjab*** (2013) 7 SCC 108; ***In State of Andhra Pradesh v. M. Madhusudhan Rao*** (2008) 15 SCC 582 and ***Bhaskar Lal Sharma v. Monica*** (2009) 10 SCC 604, where the Hon’ble Apex Court dealt upon scope, object and applicability of section 498-A.

12. There being 15 witnesses, for proper comprehension, appreciation and analysis, it would be desirable to categorize witnesses as per their status.

First set - Immediate Neighbours,

Second set - Relatives

Third set - Authorities, who recorded dying declarations

Fourth Set - Medical Expert.

Fifth Set - Investigation Officer.

Sixth Set - Panch Witness.

FIRST SET - IMMEDIATE NEIGHBOURS

13. **PW1** Ganesh testified that, his elder brother Jagannath had tenants i.e. Ibrahim Pathan and they stayed 50 ft. away from his house. He was acquainted with accused, who was serving as a teacher. Witness claims to be familiar with deceased Mehrunissa, who was wife of accused. That, they had no issues. There were frequent quarrels on account of domestic reason, but he does not know exact cause. He further deposed that, accused used to come in inebriated condition, pick up quarrels and abused wife Mehrunissa. Witness claims that, he always made endeavour to give understanding to accused. He claims to have personally seen

altercation between them on 16.12.2001. He interacted with accused, who told him that, his wife did not allow him to perform second marriage as he was intending to perform it. He deposed that, he gave understanding accused. On 19.12.2001 at around 7:00 to 8:00 p.m. he heard shouts of Mehrunissa and so they rushed to the house of accused and saw her in flames. At that time, accused was standing at the distance of 5 ft. Witness himself, his nephew Tukaram, brother Jagannath, one Bhalchandra, mother of Jagannath namely Parvatibai extinguished the fire. While she was taken in jeep to the hospital, she disclosed that husband set her on fire. She breathed her last at civil hospital.

There is extensive **cross examination** and only relevant cross is reproduced herein.

In paragraph no.8, there are questions about period since there was acquaintance with accused and his family; distance between his house and accused; whether he accompanied accused or gave any advice to seek medical consultation for conception or about any advice being given to Mehrunissa to file complaint. In paragraph no. 9, he is unable to state details of agricultural land standing in the name of Mehrunissa. In paragraph no.10, questions are put regarding since when accused intended to perform second marriage and whether Mehrunissa personally informed to him. He

admitted about receiving invitation for Eid from accused. Then, he is questioned about episode of burns dated 19.12.2001, in which she answered that he only saw accused while present in the house. He also volunteered that, there was can in the hand of accused, but answered that, he made no attempts to snatch away the can. He denied obtained handloan from accused.

Omission is brought in paragraph no.15 regarding incident of 16.12.2001 regarding altercation going between accused and deceased; about calling accused outside the house and persuading him to wait till morning and assured that he would obtain the signature by giving understanding to her. In paragraph no.16, he answered that, he met police 5 to 6 days after the incident and he had no occasion to disclose story narrated by victim to anybody else. He deposed that, there were no other talks during the journey to the hospital except disclosing by Mehrunissa about burns by her husband. Again omission is brought in paragraph no.17 about victim shouting "*Bachav - Bachav*".

PW2 Parvatibai claimed that, she was acquainted with both, accused and deceased. They had no children. As deceased could not conceive, there were frequent quarrels between them. Accused insisted her to give him signature on paper for permission to perform second marriage and also get immovable property

transfer in his name. Regarding incident of burns, she stated that, she heard shouts and so she rushed to the spot. Accused was also present in the rear side portion of the house. Tukaram, Jagannath and other doused the fire by pouring the water and Mehrunissa being taken in jeep and before it in the house she disclosed that husband set her on fire and she succumbed to burns and admit in hospital.

This witness is **cross-examined** primarily on the episode of burns. She admitted that, at Majalgaon hospital, brother and his wife had arrived in hospital. She admitted that, there was no conversation in the journey. She admitted that she did not give advice to accused on account of conception of Mehrunissa. She admitted cordial relations with there and admitted she made inquiry about agriculture land and its location. But she admitted that it was purchased by accused in the name of Mehrunissa. She also admitted that accused did not ask Mehrunissa to mutate land in his name during her presence. In cross, paragraph no. 8, she admitted that brother of Mehrunissa, namely Badioddin, his wife and even accused accompanied with Mehrunissa to Beed hospital. Rest is all denial.

14. **PW4** Jagannath in his evidence at Exh.21/C stated that, accused resided in a room, abutting to his cattle shed since 15

to 20 years. That, his marriage was performed with Mehrunissa since prior to residing in his house and they had no children. According to him, there were frequent quarrels between accused and his wife, but he did not know its cause. In their fight, he and his brother persuaded them not to fight. On 19.12.2001, after hearing commotion, he went there and saw the neighbourers thronged in front of house of accused and Tukaram going towards house of accused with bucket of water. He too rushed and saw Mehrunissa in flames. He and his brother Tukaram made endeavour to douse fire and suffered burns to his finger. While he was extinguishing fire, at that time, accused was standing in a room at a distance of 4 to 5 feet. That time, Mehrunissa disclosed that husband poured kerosene and set her on fire. She was taken in jeep, he himself went to doctor for treatment of his burns.

While under **cross**, he answered that, accused was his friend and that the couple was anxious on account of conception, but he denied giving any advice for undergoing treatment. Then stated that he did advice accused to go for medical check up at Gujrat and he accordingly took him to Gujrat. He admitted that, he reached 15 minutes after the burns and when fire was almost doused. In paragraph no.14, he stated that, as per his knowledge Mehrunissa had conceived during wedlock and he learnt about it

from accused. That, there was conversation between Mehrunissa and his brother Ganesh. Rest is all denial.

SECOND SET - RELATIVES

15. **PW7** Mohammad Badiuddin, brother of deceased deposed at Exh.29 that, after marriage with appellant, his sister could not conceive, resulting into quarrels between spouses. Accused appellant insisted for another marriage. Accused intended to perform another marriage for children. Appellant accused also asked his sister Mehrunissa to transfer agricultural land in his name, which was mutated in her name. Accused appellant used to beat Mehrunissa and she used to disclose all these facts whenever she met. On 19.12.2001, while we was working as P.S.O. at Majalgaon police station, he learnt about admission of his sister in the hospital at Majalgaon. He immediately rushed there. He claims that he asked cause of burns to his sister and she disclosed that in the evening around 7:00 to 7:15 p.m., while she was at home, appellant arrived at home, there was an altercation between them and in the fight, accused husband poured kerosene and set her ablaze.

In **cross** he admitted that, he does not know about visit of his sister and her husband to Gujrat for medical treatment. He answered that he made inquiry to his sister about the details of second marriage of accused, but she did not inform specific details

of purpose of marriage. Therefore, in spite of being brother, his evidence in support of quarrel and fights or second marriage is also omnibus in nature. He also admitted that land standing in the name of his sister, was purchased by accused himself.

16. **PW13** Mohd. Muntojoddin, brother-in-law of deceased at Exh.44 stated that, victim Mehrunissa was the sister of his wife and she was married to appellant in the year 1976. Victim did not conceive out of wedlock. There were frequent quarrels between them on that count. Husband used to beat and maltreat Mehrunissa. Whenever she came to his house, she disclosed such facts to him. According to him, the incident took place on 19.12.2001 and so he and his wife on receipt of message, rushed to the hospital at Beed. He claims that, he asked her about burns and at that time she disclosed that around 6:30 to 7:00 p.m., there was bickering between the spouses and enraged husband Ibrahim doused her by kerosene oil and set her on fire. She succumbed to the burns on 21.12.2001.

Paragraph 7 of his **cross** shows that, there is omission as regards to husband beating Mehrunissa on account of infertility.

THIRD SET - AUTHORITIES WHO RECORDED DYING DECLARATIONS

17. **PW8** Ganpat, Naib Tahsildar at Exh.30/C testified that,

on 20.12.2001, while he was attached Tahsil office as Naib Tahsildar and was empowered to be also Special Executive Magistrate. On 19.12.2001, an intimation was received from police and requesting him to record statement of one burn patient Mehrunissa, who admitted in civil hospital. Therefore, he visited hospital, consulted doctor, who obtained certification on the paper at around 00:45 a.m. on 20.12.2001. Patient gave statement. He obtained her thumb impression. He identified said declaration to be at Exh.32.

In **cross**, he is unable to assign reason as to why it is not noted that contents of Exh.32 was read over and explained to deceased.

18. Second witness, who recorded second dying declaration is PW9 A.S.I. Kalyankar, who in his evidence at Exh.33 deposed that, while he was attached to police station Beed as head constable, on 19.12.2001, he was assigned the duty at Government Hospital Chowky, Beed. On receipt of information from Medical Officer about admission of Mehrunissa due to burns, he went there, approached doctor, who accompanied him and when doctor opined that she was in condition to give statement, certificate to that extent obtained. He reduced her statement and obtained her toe impression on the declaration and signature of the concerned

doctor. He identified the said dying declaration at Exh.34.

19. **PW10** Nanekar, another Police Head Constable at Exh.35 stated that, PSI Nakhate deputed him for recording the statement of Mehrunissa and accordingly he went to the Government Hospital at Beed, consulted doctor, obtained certificate of fitness and recorded her statement. According to him, in the statement, she reported that, she could not conceive and also her husband was insisting for transfer of land in his favour and on that count he poured kerosene and set her on fire. He obtained her thumb impression and he identified said dying declaration at Exh.36.

He admitted in **cross** that he did not visit police chowky in the hospital to inquire whether any previous action had been taken by Beed Police.

FOURTH SET - MEDICAL EXPERT

20. **PW3** Dr. Dattatraya Pargaonkar, Medical Officer in his evidence at Exh.19/C stated that, on 20.12.2001, he examined Jagannath for his complaint of burn injury to his finger and he issued certificate Exh.20.

While under **cross** he admitted that, he did not carry

letter received to him from police dated 25.12.2001.

21. **PW5** Dr. Shriram Chavan, autopsy surgeon, who conducted post mortem on 21.12.2001 and attributed death due to cardio respiratory failure due to 93% extensive burns. According to him, burn injuries were ante-mortem in nature and sufficient to cause death in ordinary course of nature.

He was not cross examined.

22. **PW11** Dr. Kailas Paithankar at Exh.38 stated that, on 20.12.2001 while he was on duty, Executive Magistrate approached him with a request to examine patient Mehrunissa and therefore, he examined the patient and issued certificate Exh.36/1.

While under **cross** he answered that Mehrunissa was admitted on 19.12.2001 at 10:15 p.m. That, on 20.12.2001 at about 4:00 p.m. Dr. Dudhal i.e. PW12 examined her. He admitted that, general condition of Mehrunissa was poor, when dying declaration (Exh.36) was recorded.

23. **PW12** Dr. Kailas Dudhal stated that, on 20.12.2001, he was on duty as a Civil Surgeon. Around 9:00 a.m. patient by name Mehrunissa was admitted in burn ward. He clinically examined

her. She gave history of burns and disclosed that, husband poured kerosene and set her on fire. Therefore, he sent requisition to the police, who came and recorded statement on 20.12.2001. He further deposed that Mehrunissa did not disclose him about the person, who pressurized her to give earlier statement nor she disclosed about the presence of any person at the time of recording earlier dying declaration.

In **cross** he admitted that, on 20.12.2001 he examined Mehrunissa at Beed, but denied that her statement was recorded at Beed hospital yesterday. All suggestions were denied by him.

24. PW14 Manisha is the Nursing Staff and she stated that, on 20.12.2001 around 9:30 to 10:30 a.m., doctor Dudhal attended the patient, namely Mehrunissa in the burn ward and that time she was accompanied doctor. According to her, patient disclosed that, in the night, at the time of her admission in hospital, her husband was with her, and therefore, due to his pressure, she gave incorrect statement under pressure. That, she further added that, her husband put her on fire by pouring kerosene. Doctor noted down the history narrated by the patient Mehrunissa on the case papers and she identified case papers at Exh.43.

FIFTH SET – INVESTIGATION OFFICER.

25. PW15 P.S.I. Nakhate is the Investigating Officer.

SIXTH SET – PANCHHA WITNESS.

26. PW6 Dnyaneshwar is the pancha to spot panchanama Exh.28.

27. However, learned trial court has already acquitted accused from offence punishable under section 302 IPC and therefore, when said charge is not available, there is no necessity to analyze and re-appreciate the dying declarations.

28. Consequently, only aspect which falls and remains for consideration of this court is whether offence 498-A IPC has been made out and thus proved beyond reasonable doubt.

ANALYSIS OF EVIDENCE OF PROSECUTION WITNESSES

29. PW1 Ganesh, PW2 Parvatibai and PW4 Jagannath, who are neighbors and landlord respectively, deposed about quarrel and altercation on the ground of second marriage, not conceiving and on the ground of causing signature on the paper, but cross of PW1 Ganesh shows that, he is not aware of medical treatment given to wife by husband or he does not seem to be aware in whose name agriculture land stood. Similar is the statement by PW2

Parvitabai. Testimony of PW4 Jagannath is only on the point of episode of burns. It needs to be noted that, marriage life of accused and deceased was around almost two decades old. Taking the same into consideration, though there was quarrel, this witness has over heard about occurrence dated 16.12.2001. It is apparently a quarrel between couple. He does not speak that deceased reported them about any ill treatment or harassment at the hands of her husband.

30. As regards to relatives i.e. PW7 Mohammad Badiuddin and PW13 Mohd.. Muntojoddin are also only consistent about quarrel between spouses on above background. Allegations of PW7 Mohd. Badiuddin are apparently general and vague. In cross, he has admitted that, his sister did not give specific details of purpose of second marriage. Likewise, as regards to PW13 Mohd. Muntojoddin is concerned, there are material omissions about husband beating on account of infertility.

Consequently, relatives evidence is also non specific and vague.

31. As regards to dying declarations are concerned, which are at Exhs.32, 34 and 36 respectively, on its study, it is emerging that, in first two dying declarations, occurrence is attributed to

immolation due to husband coming home and drunk and abusing. Whereas in Exh.36, there are allegations of pouring kerosene by husband. Therefore, dying declarations are not worthy of credence as there is variance regarding reason of occurrence.

Admittedly, learned trial Judge has already acquitted husband appellant from charge of 302 IPC. Apparently, no charge was framed for 306 IPC in view of first two dying declarations.

32. Therefore, on careful re-appreciation of above discussed evidence on the point of 498-A IPC, it is merely coming on record that after getting drunk husband used to abuse, he used to seek her consent for second marriage as she did not bear child and seeking her signature on transfer of property papers. When previously said instances took place, has not come on record. What 498-A IPC contemplates is consistent and continuous harassment for cruelty. Married life of accused and deceased is 22 years old. Therefore, mere occurrence of quarrel between couple on 16.12.2001 and episode of burns taking place on 19.12.2001, cannot be made the basis of offence under section 498-A IPC.

33. Learned trial court has on one hand recorded that prosecution failed to prove death of Mehrunissa to be suicidal, accidental or homicidal, but has at the same time held charges of

section 498-A IPC proved. Therefore, for above erroneous approach, interference is called for. Hence, the following order :-

ORDER

- I) The criminal appeal stands allowed.
- II) The conviction awarded to appellant - Ibrahimkhan S/o. Alikhan Pathan in Sessions Case No. 27 of 2004 by learned Additional Sessions Judge, Majalgaon on 29.07.2005 for the offence punishable under section 498-A of Indian Penal Code, stands quashed and set aside.
- III) The appellant stands acquitted of the offence punishable under section 498-A of Indian Penal Code.
- IV) The bail bonds of the appellant stands cancelled.
- V) The fine amount deposited, if any, be refunded to the appellant after the statutory period.
- VI) It is clarified that there is no change as regards the order in respect of disposal of *muddemal*.

(ABHAY S. WAGHWASE, J.)