



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.648 OF 2005

1. Laxman S/o. Bhaurao Shelke,
Age : 27 yers, Occu. : Agri.,
2. Bhaurao S/o. Yadavrao Shelke,
Age : 55 years, Occu. : Agri.,
3. Dwarkabai w/o. Bhaurao Shelke,
Age : 45 years, Occu. : Agri.,

All R/o. Alamgaon, Tq. Ambad,
Dist. Jalna.

... Appellants.

Versus

The State of Maharashtra

... Respondent.

....
Ms.Shilpa Aurangabadkar h/f. Mr. Satej Jadhav, Advocate for Appellants
Mr. K. K. Naik, APP for Respondent – State.
....

CORAM : ABHAY S. WAGHWASE, J.

DATED : 26 SEPTEMBER 2024

JUDGMENT :-

1. Appellants have taken exception to judgment and order dated 31.08.2005 recording their guilt for offence punishable under section 498-A Indian Penal Code (IPC) in judgment passed by 4th Ad-hoc Additional Sessions Judge, Jalna in Sessions Case No. 7 of 2001.

PROSECUTION CASE IN TRIAL COURT IS AS UNDER

2. Laxman, father of deceased Meera, lodged report Exh.57 alleging that, his daughter was married with appellant no.1 on 28.04.1999. After 5 to 6 months of proper cohabitation, his daughter was ill treated by husband and in-laws. When she came for Diwali festival, she reported about harassment and ill treatment. Accused persons also took away her ornaments and mortgaged the same. News of Meera suffering burn was received, therefore, they went to the hospital, where she gave oral dying declaration that husband beat her for watching T.V. and therefore she immolated herself. She succumbed to the burns, after which Exh.57 was entertained and crime was registered.

After completion of investigation, accused persons were charge-sheeted for commission of offence under sections 498-A, 306 r/w section 34 IPC and they were tried by 4th Ad-hoc Additional Sessions Judge, Jalna, who on appreciating the prosecution evidence, acquitted all accused from charges under section 306 IPC, but convicted them under section 498-A IPC.

Said judgment and order dated 31.08.2005 is now assailed before this court by filing instant appeal.

SUBMISSIONS**On behalf of Appellant :-**

3. Learned counsel for appellant pointed out that prosecution has miserably failed to establish the charges. She pointed out that, except family members, there is no other independent evidence. She pointed out that, there is no iota of evidence in support of charge under section 498-A IPC. That, learned trial court has already acquitted accused from charge under section 304-B, 306 r/w section 34 IPC. She further pointed out that, general, vague and omnibus allegations are made by stating that there was ill treatment and harassment, but which of the accused ill treated and in what form there was harassment, has not come on record. She further pointed out that, witnesses are not consistent in spite of being close relatives. She pointed out that, though dying declarations were said to be recorded, but the same are not brought on record by investigation machinery while charge-sheeted appellant. She further point out that, surprisingly even very Investigating Officer has not been examined in the trial court. Consequently, she questions judgment of conviction recorded for offence under section 498-A IPC and prays to allow the appeal.

On behalf of Respondent – State :-

4. Learned APP while opposing the appeal, pointed out that, barely after few months of marriage, husband and in-laws maltreated deceased. That, when she came for festival, she reported it to her parents and uncle. That, they are all examined and they have duly deposed and supported each other. He pointed out that, before she suffered burns, husband had beaten her. That, learned trial court has correctly appreciated the evidence and has rightly convicted husband and in-laws for 498-A IPC and so he prays to not to disturb such findings.

EVIDENCE ON RECORD

5. Role and status of prosecution witnesses is as under :

PW1 Laxman is the informant father.

PW2 Rambhau is brother of PW1 and uncle of Meera.

PW3 Krishnabai, pancha to inquest panchanama (Exh.60)

PW4 Padmabai is mother of deceased.

PW5 Balaji neighbour did not support prosecution.

PW6 Devidas pancha to spot panchanama did not support prosecution.

6. Here, there is evidence of informant father **PW1** Laxman, uncle **PW2** Rambhau and mother **PW4** Padmabai. Ground raised in appeal is that witnesses are not consistent and are not lending support to each other. Consequently, substance of the evidence of these three witnesses, which is of significance is required to be reproduced :-

7. **PW1** Laxman in his evidence at Exh.56 deposed as under:

“The place of the accused is Alamgaon. Meera was treated nicely for 5 to 6 months. Thereafter, there was ill treatment to her. She had come for Diwali. When I asked her about her ornaments, she started that those were mortgaged. When she asked them to redeem then her parents-in-law started ill treating her. Her father-in-law had come to take her, then she went along with him. Then, I brought her at Shivratri, and then she stated me that when I had asked them about ornaments, they started to ill treatment. Thereafter, her father came to take her. But, she was not ready to got with him. But, we pacified her and send her with her father-in-law. After one month, I received the message. My brother came to me and he stated that my daughter is burnt and admitted to hospital. Then, we all came to the hospital. Then, I saw her in burn position. In the hospital, she stated me that she was harassed, and so she herself burn her, by taking rockel on her person. She was in the hospital for 5 – 6 days and then died. Then, I came to the police station and lodged the report. It was reduced into writing by police. It was read over to me and then I signed. It is at Exh.57.”

While under cross, informant admitted that, accused persons were present in the hospital and it is they who had admitted

her. They were available in the hospital for 5 to 6 days. There was police chowky in the hospital and police also met him. He candidly admitted that since 27.5.2000 to 02.06.2000, he did not lodge report.

Following omissions are brought in paragraph 3 of cross:-

Accused persons treated Meera nicely 5 to 6 months and thereafter ill treatment started; when Meera had come for Diwali she stated that when he asked to redeem the mortgage of ornaments, then the appellant also ill treated her; when she was brought for Shivratri, he had asked accused to redeem the ornaments and then also accused ill treated her; she also stated that she got on fire due to harassment of accused. Witness has admitted that, such text is not finding place in the FIR.

8. **PW2** Rambhau in his evidence at Exh.58 deposed as under :

“The complainant is my real brother. The deceased Meera was his daughter. She had married on 28.04.1999 with Laxman Shelke. She was treated nicely for 5 to 6 months. My brother had brought her at Diwali. I met her then, she stated that her mother-in-law scold her. I asked about it and then she stated that these are mortgaged. After Diwali her father-in-law took her. She was brought to Shivratri, then we asked about her ornaments. Then, she stated that accused had beaten her and there is harassment to me. Her

father-in-law came to Samartha Sahakari Sugar Factory and asked me the help of Rs.25,000/-. He demanded it, for running the electricity shop. I could not pay and express accordingly. After Gudi Padwa Meera had come to our place and then we enquired about the ornaments. Meera was asked Rs.25,000/- by the accused persons, as I came to know from her, she was harassed for that, and was sent to our place. On 27.05.2000 I received wire-less from Jalna that Meera has burnt, and to start quick. Then, I came to the house and we 4 went to Jalna. I saw her lying on the cot in burnt condition. When we asked she stated that in that night she watch the T.V. On account of that her husband Laxman beat her. Her husband stated that, if you are found of watching T.V. you take it from your father. If I allowed you to watch then you would elope with anybody. She did not sleep at that night and due to harassment by the accused she poured the rockel on her person and set fire to herself. These accused are before court today.”

While under cross, he admitted that all relatives were present in the hospital during her survival as well as at the time of post mortem.

In paragraph no. 3 following omissions are brought :-

That Meera had come to her parents house and this witness questioned about her ornaments and she stated that, when she asked accused to redeem the ornaments she was ill treated. Rest are all denial.

9. **PW4** Padmabai mother in her evidence at Exh.66 deposited as under :-

“The deceased Meera was my daughter. The marriage took place with Laxman. When I asked about her Ekdani, when she come at Diwali. Thereafter, at Sankrant she came to my house. On Mahashivratri she was beaten by her husband, when she asked to bring Ekdani. She was pacified and was sent to her husband’s place. My brother-in-law Rambhau went to meet her. Then, she was not allowed to meet him. She was sent for 6 days at her in-laws place. The father-in-law of Meerabai came after 15 days of Holi to my brother-in-law to demand amount. On the message, we came to Jalna Government Hospital. When her husband was asked about the T.V. he was stating that to bring it from my parents, and then to watch. He had also beaten on this count to deceased. Meera stated me in the hospital that she could not tolerate the ill treatment. Therefore, she herself set her on fire. The accused are before court today.

While under cross, she answered that police did not come to record his statement and she admitted that she was deposing at the instance of her husband.

So much is the only evidence of parents and uncle.

10. Here, though there was charge for offence under sections 304-B, 306, 498-A r/w section 34 of IPC, guilt is recorded by learned Trial Judge for offence under section 498-A IPC only.

11. As regards charge under Section 498-A IPC is concerned, as to what actually constitutes cruelty has been lucidly and succinctly dealt in the landmark cases of ***State of West Bengal v. Orilal Jaiswal***

[(1994) 1 SCC 73], *Giridhar Shankar Tawade v. State of Maharashtra* (2002) 5 SCC 177; *State of Andhra Pradesh v. M. Madhusudhan Rao* (2008) 15 SCC 582; *Bhaskar Lal Sharma v. Monica* (2009) 10 SCC 604 *G. V. Siddaramesh v. State of Karnataka* (2010) 3 SCC 152 and *Gurnaib Singh v. State of Punjab* (2013) 7 SCC 108; *K. Subba Rao v. The State of Telangana* (2018) 14 SCC 452.

12. On comparative analysis of evidence of father PW1 Laxman, mother PW4 Padmabai and uncle PW2 Rambhau, it is clearly emerging that, they are merely stating about ill treatment. None of them have stated form or quoted instances of ill treatment. Only PW2 Rambhau speaks about beating by husband, but when it took place is not deposed by him. Above all, cross of informant shows that, his testimony is full of material omissions and contradictions. Immediate neighbour PW5 Balaji has not supported prosecution. Therefore, when evidence of prosecution is falling short on essential requirements as contemplated under law, said charge cannot be said to be proved beyond reasonable doubt.

13. As pointed out that, dying declarations of deceased was said to be recorded, but surprisingly it is not part of charge-sheet and it is also so observed by learned trial Judge. Very Investigating

Officer, who charge-sheeted accused does not seem to have stepped into witness box. Another stark feature of this case is that, in spite of parents and uncle claiming to have received oral dying declaration, none of them have taken urgent steps to lodge FIR in spite of availability of police chowky in the hospital. On the contrary, FIR is subsequent to funeral i.e. after two days. Such aspect further contributes to the credibility of prosecution version.

14. Perused the judgment under challenge. Learned trial Judge has not assigned sound and plausible reasons for accepting prosecution version and evidence while recording guilt under section 498-A IPC. In the light of above discussion, interference is called for. Hence, the following order : -

ORDER

- I) The criminal appeal stands allowed.
- II) The conviction awarded to appellants, namely, (i) Laxman S/o. Bhaurao Shelke, (ii) Bhaurao S/o. Yadavrao Shelke and (iii) Dwarkabai w/o. Bhaurao Shelke in Sessions Case No. 7 of 2001 by 4th Ad-hoc Additional Sessions Judge, Jalna on 31.08.2005 for the offence punishable under section 498-A of Indian Penal Code, stands quashed and set aside.

- III) The appellants stand acquitted of the offence punishable under section 498-A of Indian Penal Code.
- IV) The bail bonds of the appellants stand cancelled.
- V) The fine amount deposited, if any, be refunded to the appellant after the statutory period.

[ABHAY S. WAGHWASE, J.]