



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 659 OF 2005

1. Eknath s/o Trimbak Kharat,
Age: 28 years, Occ: Agri.,
R/o: Jawala Jiwaji, Tq. Sailu,
Dist. Parbhani.
 2. Kesarbai w/o. Trimbak Kharat,
Age: 60 years, Occ: Household
R/o: As above.
- ... Appellants.

Versus

The State of Maharashtra

... Respondent.

.....
Ms. Jayshree Nawale h/f Mr. V. D. Salunke, Advocate for the
Appellants.

Mr. S. M. Ganachari, APP for the Respondent-State.

.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 10.10.2024

Pronounced on : 15.10.2024

JUDGMENT :

1. In this appeal, there is challenge to the judgment and order dated 08.09.2005 recording guilt for offence under Sections 498-A and 306 r/w 34 of the Indian Penal Code [IPC] after conducting Sessions Trial No. 105 of 2004.

PROSECUTION CASE IN BRIEF IS AS UNDER

2. PW1 Ashroba lodged report with police alleging that his daughter Urmila was married to appellant six years ago. For a period of two years, everything was smooth. However, thereafter accused nos. 1 and 2 put up demand of sewing machine and for construction of house. On such count, she was beaten and kept starved. Urmila, when came for Diwali, reported the above demand. When Ashroba went to pay part amount, he and his companion **Shivaji** were beaten by accused no.1. Next day, news was received that Urmila has died and therefore, he lodged report Exhibit 25, on the basis of which crime was registered and it was investigated and accused were chargesheeted for commission of offence punishable under Sections 498-A and 306 r/w 34 of the Indian Penal Code [IPC].

3. Sessions Trial No. 105 of 2004 was conducted by learned Ist Adhoc Additional Sessions Judge, Parbhani, who, on appreciating the evidence, vide judgment dated 08.09.2005, accepted the case of prosecution and held accused appellants Eknath and Kesarbai i.e. husband and mother-in-law, guilty of offence under Sections 498-A and 306 r/w 34 of IPC.

Exception has been taken to the above judgment and order by filing instant appeal.

SUBMISSIONS

On behalf of the appellants :

4. Learned counsel for the appellants would submit that prosecution has failed to establish its case beyond reasonable doubt. She pointed out that there is weak, little or no evidence on the point of cruelty. She would submit that there are allegations of demand of Rs.20,000/- for sewing machine and for construction of house, but complainant himself has admitted that accused already had their own house which was ancestral one. That, in cross, he also admitted that during his visit, he noticed sewing machines. Therefore, learned counsel pointed out that story put up by complainant regarding above demand is not correct and unworthy of credence.

5. Learned counsel pointed out that except evidence of informant and PW2 and PW3 i.e. brother and brother-in-law of deceased respectively, there is no independent evidence. No neighbours are examined and only family members are examined. She pointed out that there is no evidence containing elements or ingredients for

attracting Section 498-A and 306 of IPC. As regards the offence under Section 306 IPC is concerned, she submitted that there are allegations of consumption of poison, but there is no supportive evidence about the same. Therefore, according to her, case of prosecution was not proved beyond reasonable doubt and rather it was a case of benefit of doubt, but learned trial Judge, in absence of cogent evidence, accepted the case of prosecution. There is apparent improper appreciation of evidence and settled law has not been considered and hence, she seeks interference by allowing the appeal.

On behalf of the respondent State :

6. On the other hand, learned APP would submit that there was demand of Rs.20,000/- for constructing house and for purchasing sewing machine. In the backdrop of such demand, deceased Urmila was beaten and subjected to cruelty. According to learned APP, injuries are noted by autopsy surgeon in postmortem report column no.17. She was also kept starved. Only because of such matrimonial cruelty, deceased consumed poison. Husband and mother-in-law being solely responsible, learned trial Judge has committed no error whatsoever in returning the guilt and hence he prays not to disturb the findings which are based on sound reasons.

EVIDENCE ON RECORD

7. Following four witnesses are examined by prosecution in support of its case :

PW1 Ashroba - father of deceased. He is the Informant.

PW2 Bharat - brother of deceased.

PW3 Dnyaneshwar – brother-in-law of deceased (sister's husband).

PW4 PSI Wakade is the Investigating Officer.

ANALYSIS

8. First let us see whether offence of Section 498-A IPC, for which husband and mother-in-law are tried, is proved beyond reasonable doubt. To ascertain the same, evidence of informant father, brother and brother-in-law of deceased is required to be reproduced.

9. **PW1 father** is examined at Exhibit 24, wherein he deposed as under:

“1. My daughter Urmila was married to accused no.1 about six years ago. An amount of Rs.56,000/- was expended in the marriage. After marriage, Urmila went to

Jawala for cohabitation. At that time, the brother of accused no.1 and his parents were living with accused no.1. Urmila was maintained well for a period of 2 years after marriage by the accused. Thereafter, accused 1 and 2 started saying to Urmila that should bring Rs.20,000/- for purchasing sewing machine and for construction of house. I could not arrange for the money soon. Whenever I or my son visited her matrimonial house or whenever she visited my house, she used to tell us that, the accused ill-treat her, beat her and keep her starved. Thereafter, we brought home Urmila on account of festival "Diwali". Thereafter, I arranged for Rs.10,000/-. I came to Jawala to the accused with Urmila and my brother-in-law Shivaji. Thereafter, accused No.1 accepted the amount of Rs.10,000/- and protested by saying why Rs.10,000/- only were brought and thereafter beat me and Shivaji. Thereafter, I and Shivaji returned to our village leaving Urmila there only. This incident is of 7th day of the month, the day was Sunday. On 8th we got the message that Urmila was hospitalized in Govt. Hospital, at Sailu. Thereafter I and my relatives came to Sailu. On reaching hospital, we did not see either Urmila or the accused. Thereafter, we went to Jawala. We saw Urmila dead at Jawala. We went to Sailu after performing last rites of Urmila. Thereafter I lodged the complaint in police station, Sailu."

While under cross, in para 3, PW1 informant admitted that appellant Eknath had ancestral house at the time of marriage itself.

He admitted that there was a sewing machines and an over-locking machine, which were electrically operated. He answered that accused had constructed another house by the side of school. He answered that except himself and son, no one went to the house of accused. He answered that two to three days before Diwali, Urmila was taken to hospital at Lonar due to illness and she was reached back to matrimonial place on 07th of December. In para 8, he admitted that he did not inform police at Jawala about the incident. He denied that Urmila had lost her mental balance and that she was brought to the house of accused against her will and that he filed false complaint.

10. **PW2 Bharat**, who is brother of deceased Urmila, at Exhibit 26 deposed that :

“2. Accused maintained Urmila well for two years after marriage. Thereafter accused started ill-treatment her. Thereafter, accused started saying to Urmila that she should bring Rs.20,000/- for sewing machine and for construction of house. Urmila used to tell us about ill-treatment whenever we visited her matrimonial house or she was brought for the festival. Thereafter, my father raised amount of Rs.10,000/-. Thereafter, my father, Urmila and Shivajirao went to the place of accused at Jawala. This incident is of 7.12.2003. Thereafter accused 1 and 2 said to my father as to why amount of Rs.10,000/- only was brought and both of

them manhandled my father. My father kept Rs.10,000/- there only and came back after leaving my sister Urmila there only. My father came back on that day itself. We received a telephonic message on 8.12.2003 in the morning that, Urmila was hospitalized in Govt. Hospital, Sailu. Thereafter all of us came to the Govt. Hospital at Sailu. We did not see any one there. Thereafter we went to Jawala. We saw the dead body of Urmila there. Urmila committed suicide as she could not bear the ill-treatment of the accused, by consuming poison.”

PW 2 brother, while under cross, answered that he reported ill-treatment to Sampat and Sheshrao i.e. his maternal uncles, who lived in Jawala. He admitted that accused lived in new house and machines were kept in the old house. He also admitted that accused built new house after marriage. He again admitted that in the old house, there were sewing and over-locking machines. Omission is brought about accused Kesarbai asking why only Rs.10,000/- were brought. Rest is all denial.

11. **PW3 Dnyaneshwar**, sister's husband, also stated in his evidence at Exhibit 27 as under :

“1. Urmila was sister of my wife. My wife was taken to her maternal place on account of Diwali. At the same time Urmila was also brought to her maternal place. I had gone to my in-laws place for bringing back my wife after Diwali. At that time, Urmila had met me at Deolgaon. At that time, Urmila had told me that she had the ill-treatment from both the accused. Urmila was saying that she had severe mental and physical ill-treatment and accused kept her starved. She had said that she did not have any desire to go to the accused. I, my wife and my parents-in-law convinced Urmila and decided to send Urmila. On the next day, I left for my village with my wife.”

This witness, while under cross, admitted that he did not tell police in the statement that Urmila was brought to maternal place after festival of Diwali, and also did not tell about ill-treatment to anyone from his village. He admitted that he never went to the house of accused.

12. Therefore, on analyzing evidence of father, brother and brother-in-law of Urmila, it is emerging that marriage must be of 1997-98, as father has alleged that there was cohabitation of six years. According to them, after two years there was ill-treatment on account of demand of Rs.20,000/-, i.e. for purchasing sewing machine and for constructing house. But informant as well as his son, while

under cross, are candidly admitting that since previous to marriage accused had house as well as machines and even second house was built. Therefore, aspect of demand for construction and machine after two years of marriage itself comes under shadow of doubt. Though informant claims that there was beating and Urmila was kept starved, except making general allegations to that extent, there is nothing on record to show that there was consistent, incessant harassment in the backdrop of demand, nor there is anything to show that there was cruelty as contemplated by law.

13. 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; *Gurnaib Singh v. State of Punjab* (2013) 7 SCC 108 and *K. Subba Rao v. The State of Telangana* (2018) 14 SCC 452.

14. Keeping in mind the above legal precedents, in the case in hand, apparently evidence on the point of Section 498-A IPC cannot be said to be established beyond reasonable doubt.

15. As regards suicide is concerned, there are allegations that Urmila consumed poison. Postmortem report carries endorsement about probable cause of death as, “respiratory arrest due to organo phosphorus poisoning, however, viscera preserved for chemical analysis” on 08.12.2003. Surprisingly, in spite of viscera preserved on such date, papers show that, it was sent to CA on 25.02.2004 i.e. almost after two months. Exhibit 30 shows that on 08.12.2003, plastic box was seized, but it was sent to CA on 25.02.2004 which is revealed from CA report. Panchas to seizure of said box are not examined to prove seizure. There is delayed dispatch raising doubt about chain of custody to be intact and that there was no tampering. Though, as pointed out by learned APP, there is external injury noted in column no.17 of the postmortem report, there is no further clarification that it was due to beating only and not otherwise. Further, it is pertinent to note that inquest panchanama, which was drawn prior to postmortem, categorically reflects that there are no injuries whatsoever on the person of deceased.

16. Resultantly, very seizure of said plastic box also comes under shadow of doubt. Above all, even if there is organo phosphorus, there has to be further evidence to show that accused induced, abetted or enticed her to consume it and end up her life, that too in the

backdrop of any demand ; or subjected her to such cruelty that she was left with no other alternative but to end up her life. Unless participation or active role of appellants is demonstrated, it is unsafe to attribute abetment to suicide. For all above reasons, appellants succeed. Hence, I proceed to pass the following order :

ORDER

- I. The appeal is allowed.
- II. The conviction awarded to the appellants, i.e. appellant no.1 Eknath s/o Trimbak Kharat and appellant no. 2 Kesarbai w/o. Trimbak Kharat, by learned Ist Adhoc Additional Sessions Judge, Parbhani in Sessions Trial No. 105 of 2004 under Sections 498-A and 306 r/w 34 of IPC on 08.09.2005 stands quashed and set aside.
- III. The appellants stand acquitted of the offence punishable under Sections 498-A and 306 r/w 34 of IPC.
- IV. The bail bonds of the appellants stand cancelled.
- V. 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 regarding disposal of *muddemal*.

[ABHAY S. WAGHWASE, J.]