



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

CRIMINAL APPEAL NO. 75 OF 2002

1. Ravsaheb Sahebrao Patil
Age: 32 years, Occu.: Agril.
2. Sahebrao Shahadu Patil
Age: 59 years, Occu.: Agril.
3. Ushabai Sahebrao Patil
Age: 54 years, Occu.: Agril.
4. Shobabai d/o. Shahadu Patil
Age: 39 years, Occu.: Agril.

All R/o. Bhokarbari, Taluka Parola,
District Jalgaon.

....Appellants
(Ori. Accused
Nos.1,2,3 & 6)

VERSUS

. The State Of Maharashtra

....Respondent

.....
(Appeal is abated against Appellant No.1 and Appellant No.4 as per
Court orders dated 19-09-2016 and 31-10-2023)

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Advocate for Appellant : Mr.Girish Rane
APP for Respondents: Mr.N.D.Batule

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 05 JANUARY, 2024
PRONOUNCED ON : 11 JANUARY, 2024

JUDGMENT :-

1. Dissatisfied by the judgment and order of conviction passed
by learned Ad-hoc Additional Sessions Judge, Amalner dated

04-02-2002 thereby convicting appellants herein for offence punishable under Sections 306, 498-A r/w 34 of the Indian Penal Code (IPC), surviving appellant nos.2 and 3 Sahebrao and Ushabai respectively, by invoking Section 374 of Cr.P.C. have assailed above judgment.

BRIEF CASE OF PROSECUTION

2. In brief, it is the case of prosecution that deceased Alkabai, daughter of informant PW1 Sitaram, was married to deceased appellant no.1 Ravsaheb and she went to cohabit with him at Bhokarbari. Everything went smooth for a year after the marriage. Husband and appellant no.2, father-in-law purchased a Jeep on loan and therefore, they asked deceased Alkabai to arrange an amount of Rs.20,000/- from her parents for discharge of loan. Deceased promptly reported her parents, but her father PW1 Sitaram expressed his inability on the ground that he was already heavily indebted as a result of performing marriage of Alkabai. Whenever husband and father-in-law of deceased Alkabai went to drop her or bring her back from her maternal house, they put up above demand. According to prosecution, getting fed up of harassment for failure to meet the demand, Alkabai consumed poison and while undergoing treatment

she succumbed, resulting into FIR by PW1 Sitaram, father deceased.

PW5 Rajput (API), who was entrusted with investigation, carried out the same and on gathering sufficient evidence chargesheeted husband and in-laws of deceased Alkabai.

On conclusion of trial, learned trial Court by its order dated 04-02-2002 held deceased husband (appellant no.1), father-in-law (appellant no.2), mother-in-law (appellant no.3), deceased paternal aunt of accused no.1 (appellant no.4) guilty of offence under Sections 306 r/w 34 and 498-A r/w 34 of the IPC. Original accused nos.4 and 5 were acquitted from both the charges.

Consequently, only appeal of surviving appellant nos.2 and 3 i.e. parents-in-law remains for consideration.

3. Being first appellate court, while exercising powers under Section 374 of the Code of Criminal Procedure, this Court undertook the exercise of re-examining, re-appreciating and re-analyzing the evidence before the trial Court to ascertain whether the findings and conclusion reached at is just, legal and proper.

SUBMISSIONS

On behalf of Appellant :

4. The sum and substance of arguments advanced by learned

Counsel for appellants is that there is apparently weak and fragile evidence on behalf of prosecution. He pointed out that the fundamental principle of law regarding primary burden to be on prosecution has not been discharged by prosecution beyond reasonable doubt. According to him, in the entire evidence, necessary ingredients for attracting both the charges are patently missing. He took this Court through the entire prosecution evidence and would submit that apart from inconsistent versions of very parents of deceased, there is nothing to indicate illegal demand and further ill treatment or harassment to deceased on its non-fulfillment. That witnesses have improvised their versions and their testimonies are full of material omissions, which are got proved through Investigating Officer, but according to him, learned trial Court has overlooked the same.

5. He would next submit that accusations are that deceased committed suicide by consuming poison, but there is no evidence in that regard. He pointed out that Autopsy surgeon has also opined death to be due to pulmonary edema and there is no clear medical finding regarding death to be due to consumption of poison.

6. He also criticized prosecution case on the ground that alleged occurrence is of 26-07-1998. That investigating machinery has come across dying declaration of deceased wherein she has not attributed any role to appellants but inspite of Investigating Officer admitting to that extent, it is tried to be suppressed by prosecution. He further emphasized that even parents, who claimed to have interacted with deceased before her death and had further claimed about she naming appellants to be responsible for consumption of poison, there is no FIR at their instance immediately, rather complaint regarding occurrence of 26-07-1998 is lodged on 28-07-1998 and therefore, there is delay of which there is no explanation.

7. He further pointed out that in FIR PW1 Sitaram, father of deceased stated about deceased daughter informing him about only husband quarreling and hence, she consuming powder, but it is pointed out that in the testimony, father deposed about harassment and hence, according to him, there is no consistency by informant himself.

8. Lastly, he submitted that even PW3 Mangalabai so called friend of deceased is also silent about harassment in backdrop of

demand. He very strenuously submitted that none of the witnesses have either given instances of harassment nor the nature and mode of harassment and so it is his submission that in view of weak quality of evidence, learned trial Court ought not to have held husband, in-laws and paternal aunt of accused no.1 guilty of alleged charge. That there is not only failure to appreciate evidence in correct perspective but even settled law has not been taken into account before convicting the appellants and so he prays to allow the appeal by setting aside the impugned judgment.

On behalf of State :

9. Learned APP, in response to above submissions, would point out that barely after a year of marriage, appellants subjected deceased to mal-treatment and harassment on account of demand of Rs.20,000/- for repaying loan of the vehicle taken by them on loan. They asked deceased to arrange this amount from her parents. That on failure to meet the demand, they did not allow her to be taken to her parents' house for festivals. That they had also threatened that unless demand is met, they would not allow deceased to be taken. That father and mother of deceased have consistently deposed to that extent as deceased used to promptly report them about the demand.

That prosecution has also adduced evidence of PW3 Mangalabai friend of deceased, who also deposed about demand and harassment. That appellants had made her life miserable and she was compelled to end her life. Finding evidence to that extent, learned trial Court has rightly held appellants guilty and so he prays to dismiss the appeal for want of merits.

10. On going through the evidence before the trial Court, it seems that case of prosecution is rested on the testimony of in all five witnesses i.e. PW1 Sitaram Deva Patil, father of deceased, PW2 Ajit Raghunath Patil, Autopsy Doctor, PW3 Mangalabai, friend of deceased, PW4 Ushabai Sitaram Patil, mother of deceased and PW5 Suresgsinh Magansing Rajput, Investigating Officer.

11. The gravamen of the charges is harassment, ill-treatment on account of non-fulfillment of demand of Rs.20,000/-. That cruelty and ill treatment is of such nature that deceased was compelled to end up her life by consuming poison.

ANALYSIS

12. The fundamental criticism of learned Counsel for the

appellants is that, at the outset, prosecution failed to establish death of deceased Alkabai to be due to consumption of poison. He pointed out that after post mortem, opinion was reserved by the Autopsy Doctor for CA report and thereafter, Autopsy Doctor has opined death to be due to pulmonary edema. He pointed out that in cross-examination, Autopsy Doctor has admitted that pulmonary edema is possible due to neumonitis. That symptoms mentioned on page 6 of post mortem notes are possible due to ingestion of few drops of poisoning. Resultantly, it is his submission that there is no cogent evidence about consumption of poison except medico legal expert's opinion.

13. In the light of above objection, admittedly here case of prosecution is that deceased Alkabai consumed poison. Evidence of Autopsy Doctor at Exh.30 clearly shows that opinion regarding probable cause of death was reserved for CA. However, record shows that after post mortem being done on 27-07-1998, final cause of death is surprisingly issued on 23-11-2001 i.e almost after three years. Consequently, what was the exact nature of poison / powder consumed has not come on record. Where and at what time it was consumed has also not come on record. As pointed out by learned

Counsel for appellants, even Autopsy Doctor has not clearly opined regarding death to be due to consumption of poison only, rather opinion is about death to be due to pulmonary edema.

14. As per medical science, pulmonary edema is often caused by congestive heart failure and it may so happen due to various reasons like heart attack, any decease of heart, narrowing of heart walls and even sudden severe high blood pressure. Medical science also attributes occurrence of pulmonary edema to be due to certain medicines; high altitude exposure; kidney failure; narrowing of arteries leading deficient blood supply to kidneys and lung damage caused by poisonous gas or even severe infection.

In the light of above material, there is force in the submission of learned Counsel for appellants that there is no conclusive evidence that death of Alkabai is caused only because of consumption of poison. It appears that while deceased was treated, her stomach wash does not seem to have been preserved. Further papers of her treatment are also not brought on record by prosecution to draw firm opinion about Alkabai consuming particular poison. However, death of Alkabai has occurred while she was with her in-laws and that is for sure.

Offence under Section 498-A of the IPC.

15. There is charge of Section 498-A of the IPC. Learned trial Court has acquitted sister-in-laws of deceased from the said charge and convicted husband, parents-in-law and paternal aunt-in-law.

On carefully re-appreciating evidence of **PW1** Sitaram, informant and father of deceased, it is emerging that he merely speaks of Alkabai being harassed on account of alleged demand of Rs.20,000/-. However, what was the nature of harassment or ill treatment and exactly when, is not forthcoming from his testimony. As pointed out by learned Counsel for appellants, in the FIR, father reported about his daughter on query informing him about quarrel with husband and parents-in-law and so she consumed poison. Whereas in testimony he deposed that his daughter informed that she was harassed and so she consumed poison. Therefore, apparently there is variance. Allegations of demand are after a year of marriage. Deceased had visited her parents' house several times. Though informant father speaks of deceased informing during her each visit regarding demand made by appellants, and demands made when he went to bring her, there is no complaint to anyone. Specific instances are not narrated by him. His evidence i.e. examination-in-chief itself shows that he merely speaks of demand and not about any mal-

treatment meted out to her for non-fulfillment of demand. Even when he claims to have learnt in the hospital about alleged harassment, same day he has not lodged FIR, rather he approached Police after funeral i.e. on 28-07-1998.

His cross-examination shows that there are material omissions like “he going to fetch Alkabai and at that time demand of Rs.20,000/- being made”; “that after one and half month when he went to the house of accused, accused made demand to him”; “about he going to his daughter to bring her for delivery and accused refusing to send her by uttering “*hi khaoonn khaoon far majali*”; “that when parents-in-law came to take her after delivery, they uttering that “if he fails to pay the amount, they would not send her to his house.”.

In the opinion of this Court, these are material omissions which go to the root of the matter.

16. Even on appreciating evidence of **PW4** Ushabai, mother of deceased, it is apparent that she too has apparently improvised her version and it is distinct than what she reported to Police in statement under Section 161 of the Cr.P.C. and the same is got proved through Investigating Officer.

Therefore, testimonies of very parents of deceased on the point of mal-treatment, harassment is apparently either ambiguous, fragile and weak and more importantly, full of improvements and material omissions rendering it unworthy of credence.

17. **PW3** Mangalabai, friend of deceased also merely speaks of meeting deceased whenever she came to her parents' house and to her house. According to her, deceased Alkabai disclosed her that accused no.1 husband purchased a Jeep and they were indebted and so they have demanded Rs.20,000/- from her. At the end of her testimony, she deposed about deceased also disclosing about harassment at the hands of in-laws. Consequently, her evidence is also of not much value as she is also silent about instances and details about nature and mode of harassment.

To sum up, evidence of informant **PW1** Sitaram, father of deceased, **PW3** Mangalabai, friend of deceased and **PW4** Ushabai, mother of deceased, is not sufficient to conclusively hold cruelty and harassment so as to attract offence under Section 498-A of the IPC.

Offence under Section 306 of the IPC.

18. According to prosecution, harassment and mal-treatment to

deceased Alkabai was of such nature that she was constrained to end up her life. That husband and in-laws are responsible for her suicide and hence such charge.

19. Before advertng to the merits of the evidence, it would be fruitful to give a brief account regarding essentials for attracting charge of abetment to suicide and the settled legal position. For bringing home the said charge, it is duty of prosecution to prove that there was abetment to commit suicide. As to what amounts to abetment is also fairly settled.

Section 107 of the IPC deals with abetment. It reads thus:

*“107. Abetment of a thing- A person abets the doing of a thing, who -
First. - Instigates any person to do that thing; or
Secondly. - Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly.- Intentionally aids, by any act or illegal omission, the doing of that thing.*

Section 306 of the IPC deals with abetment of suicide.

Ingredients of this section are as under :

“The accused kept on irritating or annoying the deceased by words, deeds or willful omission or conduct which may even be a willful silence until the deceased reacted, or pushed or forced the deceased by his deeds, words or willful omission

or to conduct to make the deceased move forwards more quickly 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.”

20. By way of series of cases, scope of Sections 107 and 306 has been time and again decided by the Hon'ble Apex Court in the cases viz; ***Ramesh Kumar v. State of Chhatisgarh*** reported in (2001) 9 SCC 618; ***Sanju @ Sanjay Singh Sengar v. State of M.P*** reported in (2002) 5 SCC 371; ***State of West Bengal v. Indrajit Kundu and others*** reported in (2019) 10 SCC 188 and very recently in the case of ***V.P.Singh etc. v. State of Punjab and others*** reported in 2022 SCC Online SC 1999.

In above series of cases, it has been held and reiterated that accused persons should intent that deceased should end up her life. With that object in mind, if they deliberately create circumstances, which are of such nature, that deceased is left with no other alternative but to end up her life, only then charge of abetment to commit suicide can be said to be successfully brought home. Abetment is equally an essential factor to be proved by prosecution.

21. Keeping above legal requirements in mind and testing the

evidence of prosecution in case in hand, it is clearly emerging that there is no iota of evidence that in proximity to 26-07-1998 harassment or cruelty was of such nature that deceased was forced to end up her life by consuming poison. Admittedly, initially AD was registered. Defence has come with a specific case that deceased had given dying declaration wherein there is no whisper about any role attributable to any of the accused. On such submission being made, this Court verified the evidence of Investigating Officer and he in his cross paragraph no.3 has admitted that initially AD was registered and it was enquired to. He fairly admits that he received dying declaration of Alkabai recorded by Police Head Constable Dhule and that he had gone through the same and Alka had not made any complaint against anybody. Though both parents PW1 Sitaram and PW4 Ushabai speak about receiving oral dying declaration, they both failed to promptly report it to Police or lodge FIR. Rather after three days of the occurrence of alleged consumption, FIR has been lodged. Be it so, here there is nothing on record to show that there was intense ill treatment or harassment in the backdrop of demand of Rs.20,000/- even made on 26-07-1998 compelling deceased to consume poison. Very dying declaration of deceased is absolutely silent either about demand or harassment for its non-fulfillment.

Even otherwise testimony of PW1 Sitaram and PW3 Mangalabai does not show that demand was persistent or continuous. Taking such quality of evidence into consideration, in the considered opinion of this Court, charge of abetment to commit suicide cannot be applied or said to be proved.

22. After going through the impugned judgment, this Court is of firm opinion, that learned trial Judge has failed in properly appreciating evidence of parents and friend of deceased in the light of legal requirements. Conclusion drawn is without assigning sound reasons. Legal position has also been unfortunately lost sight of. Hence, such findings and conclusion cannot be allowed to be sustained. Accordingly, I pass the following order :

ORDER

I) Criminal Appeal No.75 of 2002 stands allowed.

II) The conviction awarded to appellant no.2 - Sahebrao Shahadu Patil and appellant no.3 - Ushabai Sahebrao Patil in Sessions Case No.59 of 1998 by the learned Ad-hoc Additional Sessions Judge, Amalner on 04-02-2002 for the offence punishable under Sections 306 r/w 34 and 498-A r/w 34 of the Indian Penal Code, stands quashed and set aside.

III) The appellant nos.2 and 3 stand acquitted of the offence punishable under Sections 306 and 498-A read with 34 of the Indian Penal Code.

IV) The appellants be set at liberty, if not required in any other case.

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.

(ABHAY S. WAGHWASE)
JUDGE