



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 77 OF 2002

1. Shaligram Shenphadu Patil
Age 30 years, Occ. Agril.,
2. Shenphadu Tukaram Patil
Age 65 years, Occ. Agril., ... Abated
3. Ramchandra Shenphadu Patil
Age 34 years, Occ. Agril.,
4. Leelabai Shenphadu Patil
Age 35 years, Occ. Household,
5. Atmaram Tukaram Patil
Age 35 years, Occ. Agril., ... Abated

[Appeal abated against appellant
nos. 2 and 5 vide order dated
29.09.2023]

All r/o Goradkheda, Taluka Jamner,
District Jalgaon.

... Appellants
[Orig. Accused]

Versus

The State of Maharashtra

... Respondent

.....
Mr. A. D. Sonkawade h/f Mr. A. S. Golegaonkar, Advocate for the
Appellants.

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

.....

CORAM : ABHAY S. WAGHWASE, J.

DATED : 05.03.2024

JUDGMENT :

1. Convicts for offence punishable under Sections 306 r/w 34, 201 and 176 of the Indian Penal Code [IPC] are taking exception to the judgment and order dated 30.01.2002 passed by learned First Adhoc Additional Sessions Judge, Jalgaon in Sessions Case No. 107 of 1999.

At the outset, it needs to be mentioned here that, since appellant nos. 2 and 5, i.e. Shenphadu Tukaram Patil and Atmaram Tukaram Patil died during pendency of this appeal, hence appeal as against them stands abated and there is specific order to that extent on 29.09.2023.

Resultantly, the appeal of appellant nos. 1, 3 and 4 now only remains for consideration.

FACTS IN BRIEF

PROSECUTION VERSION :-

2. Deceased Vandana was married to appellant Shaligram. Everything was smooth for three to four years. Thereafter, accused

started demanding Rs.5,000/- for digging bore well and subjected Vandana to ill-treatment. She informed it to her parents when she visited for Diwali festival. Even when deceased met her parents in a marriage, she again made same complaint of ill-treatment at the hands of husband and in-laws. Finally, getting fed up of the same, deceased committed suicide by immolating herself and so, PW1 mother Yenubai lodged FIR, on the basis of which crime was registered. It was investigated and after its completion, accused persons were chargesheeted.

3. At trial, prosecution adduced evidence of in all 7 witnesses and relied on documentary evidence like FIR, spot panchanama etc. On evaluating the oral and documentary evidence, learned trial Judge acquitted the appellants-accused persons from charge under Section 498-A of IPC, but held them guilty for offence under Sections 306 r/w 34 and 201 of IPC.

Said judgment dated 30.01.2002 is now taken exception to by filing instant appeal.

SUBMISSIONS

On behalf of the appellants:

4. The sum and substance of the arguments advanced by learned counsel for the appellants before this Court is that, there is apparently false implication. He pointed out that, here, on complete appreciation, learned trial court has already acquitted all accused from offence under Section 498-A IPC, but, he questions, how then there can be conviction under Section 306 IPC on the same set of evidence and that too, by taking recourse to **Section 113-A of Evidence Act**. He further pointed out that in fact, very occurrence is accidental one. There is no independent witness on the point of abetment. Only interested witnesses are examined and no independent witness is examined. He further pointed out that even spot panchanama is drawn at a belated stage. That, there being no direct evidence and case being based on circumstantial evidence, he points out that it is incumbent upon prosecution to establish each and every circumstance beyond reasonable doubt. Precisely this has not happened in the case in hand and according to him, here, no circumstance is firmly and cogently proved, but still learned trial Judge erred in recording guilt. For above reasons, he questions the credibility of prosecution version.

5. Learned counsel for the appellants seeks reliance on the following rulings :

1. *Basappa Dattu Hegade v. State of Karnataka* 1994 Cri.L.J. 1602.
2. *Kans Raj v. State of Punjab and others* AIR 2000 SC 2324.
3. *State of Rajasthan v. Kesa and others* 2002 Cri.L.J. 432.
4. *Heera Lal and another v. State of Rajasthan* [Criminal Appeal No. 790/2017 decided by the Hon'ble Supreme Court on 24.04.2017.]
5. *Ashok Kumar v. The State of Punjab* 1987 Cri.L.J. 1412.
6. *State of Haryana v. Suresh Kumar and others* 1993 Cri.L.J. 1400.
7. *Ravindra Pyarelal Bidlan and others v. State of Maharashtra* 1993 Cri.L.J. 3019.

On behalf of the State :

6. Supporting the judgment passed by learned trial court, learned APP pointed out that there is convincing evidence. Deceased regularly reported to her mother and other relatives about ill-treatment meted out to her by accused. He pointed out that uncle of deceased PW3 Ganpat is party to the complaint made by deceased regarding ill-

treatment by husband and in-laws. Shortly thereafter, she had met unnatural death. According to him, death having taken place while deceased was in custody of accused, they are solely responsible. He further points out that burial is also hurriedly done. There are strong circumstances and therefore learned trial court committed no error whatsoever in holding them guilty and so he prays to dismiss the appeal for want of merit.

EVIDENCE

7. Prosecution has adduced evidence of following witnesses.

PW1 mother Yenubai, who is also an informant, gave evidence about marriage of her daughter with accused. Initial period to be smooth, but subsequently husband and in laws putting up demand of Rs.5,000/- for drilling bore-well and ill-treating Vandana. She deposed that it was duly informed to them to that extent and she deposed about receiving news of burns.

PW2 Sitaram is the pancha to spot panchanama Exhibit 32 and he narrated about panchanama being drawn in his presence which he has identified.

PW3 Ganpat is the paternal uncle of deceased Vandana. Sum and substance of his evidence is that accused ill treated Vandana in the backdrop of Rs.5,000/-. He claims to have been informed by her when he had been to fetch her.

PW4 Sakubai is the aunt of deceased Vandana. She also deposed that after marriage, accused persons ill-treated Vandana in the backdrop of demand of Rs.5,000/-.

PW5 Jankiram is the brother-in-law of deceased Vandana and he also deposed on the same lines.

PW6 Sumanbai is aunt of deceased. She also testified that after marriage accused persons put up demand of Rs.5,000/- and for its fulfillment, they subjected Vandana to cruelty.

PW7 API Bahure is the Investigating Officer, who narrated all steps taken by him during investigation.

Accused has also adduced evidence of DW1 Ramchandra who is nephew of informant.

8. On perusal of record, it emerges that FIR was registered for commission of offence punishable under Sections 306, 498-A, 201 and 176 r/w 34 of IPC. Admittedly, all appellants are acquitted from charge under Section 498-A IPC and they are held guilty for remaining offences i.e. 306 and 201 IPC. Accused no.5 was only held guilty for offence under Section 176 of IPC, however, the appeal is now abated against him.

9. Before re-analyzing and re-appreciating the evidence, it would be appropriate to spell out necessary ingredients for attracting Section 306 of IPC. 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 :

- (1) There was suicide of a person;
- (2) It was committed in consequence of abetment of the accused.

In order to attract the charge of section 306 of IPC, it is incumbent upon prosecution to firmly establish **incitement, instigation, aiding or abetment to commit suicide**. Relevant law to

this extent has been fairly settled in 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; *State of West Bengal v. Orilal Jaiswal* (1994) 1 SCC 73; *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; *Chitresh Kumar Chopra v. State* (2009) 16 SCC 605; *Amalendu Pal alias Jhantu v. State of West Bengal* (2010) 1 SCC 707; *State of West Bengal v. Indrajit Kundu and others* (2019) 10 SCC 188; *Rajesh v. State of Haryana* (2020) 15 SCC 359; *V.P.Singh etc. v. State of Punjab and others* 2022 SCC Online SC 1999 and very recently in the case of *Kumar @ Shiva Kumar v. State of Karnataka* [Criminal Appeal No. 1427 of 2011 decided on 01.03.2024],

In above series of cases, it has been held and reiterated that court should be extremely careful in assessing the facts and circumstances of each case as well as the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end her life by committing suicide. Principle that is culled out is that accused persons should specifically intent that deceased should end up her life. With that sole object in mind, they must have deliberately created circumstances, which are of such nature, that deceased is left with no other alternative but to

end up her life. Only in such circumstances charge of abetment to commit suicide can be said to be successfully brought home.

Keeping above legal position in mind, evidence of prosecution is to be scrutinized.

ANALYSIS

10. It is emerging from testimony of **PW1** mother informant that for about three to four years, deceased was treated well. Thereafter, when deceased visited for Diwali, she informed about demand of Rs.5,000/- **for accused no.2** for tube well. She did not pay deceased. When she met deceased in a marriage, deceased informed her that she was ill-treated. On 14.05.1999, news of burns was received. Deceased was cremated and on the third day, this witness approached police and lodged FIR.

Following are the answers given by her in cross:

Firstly, at the time of marriage of her daughter, accused persons owned 15 to 20 acres irrigated land and there were two wells in the field with electric motor.

Secondly, financial condition of accused to be sound.

Thirdly, after due deliberation with relatives FIR was lodged.

11. **PW3** Ganpat, is the paternal uncle. According to him, **all accused demanded Rs.5,000/-** for digging tube well. When he went to fetch her for marriage of Raju Patil, accused were not ready but at the instance of accused no.5, she was allowed to go. That time, at the bus stand, she allegedly informed him that husband levelled charge on her of theft of Rs.20/- and also told about demand of Rs.5,000/-. On the day of marriage itself, there was altercation between accused no.1 and deceased Vandana.

His cross shows that there is omission about deceased informing that all accused demanded Rs.5,000/- and ill-treated her.

12. **PW4** Sakubai, aunt of deceased deposed that **deceased was treated well for two years**. Thereafter, all accused demanded Rs.5,000/-. Six months prior to the incident, father-in-law approached father of deceased for Rs.5,000/-.

In cross, omission is brought that father-in-law of deceased demanded Rs.5,000/- to her father.

13. **PW5** Jankiram, brother-in-law stated that Vandana was treated well for three years. At the time of marriage of Raju, she told him about her father-in-law and husband demanding Rs.5,000/-. Omission is brought in cross that deceased told him in marriage of Raju about demand of Rs.5,000/-

14. **PW6** Sumanbai, aunt of deceased, claims that at the marriage of Raju, accused no.1 quarreled with deceased. Deceased allegedly told her that accused persons beat her, ill-treat and abuse her and **did not provide food**. She deposed that accused no. 2 demanded money to Jayram.

15. Therefore, on carefully sifting testimonies of above witnesses, mother informant attributed demand but only to accused no. 2. However, in cross she admits accused to be already owning over 20 acres irrigated land having two wells and her FIR is a produce of due deliberation.

PW3 attributes demand to all accused which is contrary to informant's version. Whatever he deposed in witness box is not finding place in his statement. Therefore, he has improvised his version.

PW4 speaks of proper treatment only for two years, which is contrary to version of informant who deposed about proper treatment for four years and thereafter demand being made.

PW5 uncle of deceased attributes demand to husband as well as father-in-law. He does not speak about demand for bore well. Even there are material omissions in his testimony.

PW6 aunt is found to be giving a very different version than the rest of them as she has deposed about beating, abuses, not providing food, which is not even coming from the testimony of very informant mother or others.

For above reasons, witnesses are inconsistent, though closely related. They level omnibus allegations of ill-treatment and demand of Rs.5,000/- for bore well. It is difficult to accept such accusations

when informant herself has admitted that accused owned huge irrigated agricultural land having two water wells.

16. To sum up, there is little or weak evidence on the point of ill-treatment and cruelty so as to attract offence under Section 498-A IPC. Even learned trial Judge on appreciation, has answered such point in negative.

17. Now let us see whether prosecution further succeeded in establishing the charge of abetment to commit suicide. Said suicide is of 14.05.1999. Spot panchanama shows that suicide is committed outside the house and in the field.

18. Unfortunately, deceased reportedly succumbed to the 100% burns on the spot itself and therefore, there was no occasion even to record her dying declaration. No immediate neighbouring agriculturist is also available by way of witness. Admittedly, prosecution witnesses, who are family members, including informant, have merely got the news of burns at 6.00 p.m. There is no evidence for name sake seeing deceased and accused in each other's company at the time of incident or even during day time. Therefore, what triggered the alleged episode has not been substantiated by

prosecution. Defence has come with a case of accidental burns i.e. while igniting residual crop to fire. Persons namely, Chindhu and Raju, who brought deceased towards the well, are not examined by prosecution for the best reasons known to it. Here, alleged episode of burns has taken place at a distance of about 500 feet away from the house. As stated above, there is no witness seeing accused and deceased together or immediately in the proximity of episode of fire.

19. Specific defence of accused is that while deceased was igniting chaff, she suffered accidental burns. In statement under Section 313 of Cr.P.C., there is simplicitor denial. Had the death taken place in the four walls of the house, burden would have been on accused persons to offer explanation. But here, incident has taken place at a distance and away from the house. Articals and material necessary for fire are noticed at the spot. Spot panchanama shows that occurrence has taken place in the wheat crop stumps/shoots. There are marks of burns on the ground, suggesting crop also being affected due to burns.

Consequently, when there is no evidence showing presence of any of the accused at or around the spot, it is unsafe to attribute abetment.

20. In view of above discussed settled law, charge of Section 306 IPC would be attracted only when there is positive and legally acceptable evidence showing instigation, abetment, inducement. Here, material to this extent is patently missing. Allegations of ill-treatment, as discussed above, are omnibus in nature without specifying nature or instances. Learned trial court has already rejected case of prosecution for offence under Section 498-A IPC. Above discussed material specifically shows that even necessary ingredients for attracting Section 306 IPC are not available in the prosecution evidence.

21. Perused the judgment under challenge, more particularly, observations of learned trial Judge in para 14 onwards. Learned trial Judge has drawn some imaginations on its own, like, percentage of burns, suffering extensive burns and thereby completely ruling out possibility of accidental burns. Even presumption available under law has been drawn holding that death has taken place within 7 years of marriage. However, law is fairly settled that for invoking presumption available under Section 113-A of the Evidence Act, there has to be strong foundation. It is open for the court to draw inference when it has been established beyond reasonable doubt that firstly, a suicide

has been committed, secondly, it must have been committed within seven years of marriage and further, it has to be equally established that husband and relatives of deceased, who are charged for cruelty, and the same is proved. Here, learned trial Judge has itself acquitted accused from the charge under Section 498-A. Death is not shown to be only and only suicidal and not accidental. Consequently, learned trial court ought not to have convicted accused for offence under Section 306 IPC. Apparently settled legal position has not been taken into consideration while applying presumption. Therefore, even there being no evidence on the charge of abetment to commit suicide, prosecution story fails. Resultantly, interference at the hands of this court is called for. Accordingly, I proceed to pass the following order:

ORDER

- I. The appeal is allowed.
- II. The conviction awarded to the appellants, i.e. appellant nos.1, 3 and 4 by learned First Adhoc Additional Sessions Judge, Jalgaon in Sessions Case No. 107 of 1999 under Sections 306 r/w 34 of IPC and Section 201 of IPC on 30.01.2002 stands quashed and set aside.
- III. All the three appellants stand acquitted of the offence punishable under Section 306 r/w 34 of IPC and Section 201 of IPC.

IV. The bail bonds of 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.]

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