



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

**CRIMINAL APPEAL NO. 79 OF 2002**

Shivaji s/o. Chaitram Chaudhary,  
Age : 31 years, Occu. Agri. and  
Labour, R/o. Vanalkar Galli,  
Erandol, Tq. Erandol, Dist. Jalgaon.

... **Appellant/  
Accused**

**Versus**

The State of Maharashtra

... **Respondent**

...  
Mr. Pandurang M. Gaikwad, Advocate for Appellant  
Mr. N. D. Batule, APP for Respondent – State.

...

**CORAM : ABHAY S. WAGHWASE, J.**

**RESERVED ON : 20<sup>th</sup> JUNE, 2024**

**PRONOUNCED ON : 2<sup>nd</sup> JULY, 2024**

**JUDGMENT :**

1. Appellant, who stood convicted by First Ad-hoc Additional Sessions Judge, Jalgaon in Sessions Case No.213 of 1999, recording guilt for offence punishable under sections 498A and 306 of Indian Penal Code (IPC), vide judgment and order dated 07.02.2002, has preferred instant appeal, questioning the legality of the judgment.

**IN NUTSHELL CASE OF PROSECUTION IN TRIAL COURT IS AS UNDER**

2. Deceased Shobhabai, daughter of informant PW1

Bhagwan, was married to present appellant in the year 1994. For a year, she was treated properly. Thereafter, husband, mother-in-law and sister-in-law started ill treating her. Mother-in-law used to continuously nag and picked up quarrel on petty count. She used to instigate husband of deceased - accused no.1 and he used to insist for divorce. They also beat her, kept her starved and did not provide sufficient meals in spite of she being pregnant. When Shobhabai came for festival, she used to report about above conduct and behaviour of husband and in-laws.

3. Finally on 01.10.1998, a telephonic message was received that Shobhabai consumed poison and condition of Shobhabai is serious. Therefore, after last rituals, father PW1 Bhagwan approached Erandol police station and lodged report.

On the strength of which, crime bearing No. 82 of 1998 was registered, it was investigated by PW7 P.I. Mukunda Mahajan, who on gathering sufficient evidence, charge-sheeted accused persons for commissions of offence punishable under sections 498A and 306 read with section 34 of IPC and all accused i.e. husband, mother-in-law, sister-in-law and her husband were made to face trial before learned First Ad-hoc Additional Sessions Judge, Jalgaon and tried the case vide Sessions Case No. 213 of 1999 and on hearing both sides and appreciating the evidence, learned trial

Judge acquitted the accused nos.2 to 4 from both the offences, but held husband lone guilty for offence under sections 498A and 306 of IPC and sentenced him to suffer imprisonment for one year and five years, respectively, for each of the offences.

Feeling aggrieved by the above judgment and order of conviction, husband has assailed the said judgment and order by filing instant appeal.

#### **SUM AND SUBSTANCE OF THE EVIDENCE IN TRIAL COURT**

4. **PW1** Bhagwan informant father deposed about marriage of his daughter Shobhabai in 1994. After one year, when she went for festival, she complained of ill treatment at the hands of mother-in-law. Mother-in-law questioned to his daughter for not washing hair, picking up quarrel on petty count on trifle matters. Both accused said to his daughter to take Rs.50,000/- and seek divorce. On instigation of mother-in-law, husband beat her. On 01.10.1998 message received that her daughter consumed poison. Hence, he lodged report at Exh.21.

**PW2** Vimalbai, mother of deceased, deposed that, after one year when her daughter came for Diwali and Akshaya Tritiya, she reported that, husband said that he did not like her and that less dowry was given. Mother-in-law used to make her work in the

field, taunted for not washing hair and she also instigated husband to beat her. They did not provide proper treatment during pregnancy and did not allow her to sleep prior to 11:00 p.m. Message of her serious condition was received and on reaching Erandol, they learnt about consumption of poison.

**PW3** Bashir is the pancha to inquest panchanama (Exh.25).

**PW4** Abdul is the pancha to spot panchanama (Exh.27), did not support the prosecution.

**PW5** Eknath, brother of deceased, deposed that, after one year, mother-in-law taunted and commented to his sister for not washing hair. Mother-in-law instigated husband to beat her and he also beat her. They both did not provide her food properly. They did not allow her to sleep prior to 11:00 p.m. and taunted for giving less dowry. They ill treated his sister on trifle household matters.

**PW6** Ramesh Patil, PSO, who has registered the AD.

**PW7** P.I. Mukunda Mahajan is the Investigating Officer, who narrated all steps taken during investigation till filing charge-sheet.

**PW8** Dr.Karuna Bhise, autopsy doctor, who conducted post mortem and issued opinion as probable cause of death due to organo phosphorous insecticide.

## SUBMISSIONS

### On behalf of Appellant :-

5. Alleging false implication, learned counsel for the appellant pointed out that prosecution had miserably failed to establish the charges beyond reasonable doubt. According to him, there is no convincing, cogent and reliable evidence in support of any of the charge i.e. under Sections 498A and 306 of IPC. He pointed out that, there are simplicitor allegations of ill treatment by mother and brother of deceased i.e. like deceased not washing hair, mother-in-law instigating husband to beat, husband asking deceased to seek divorce by accepting Rs.50,000/- and deceased being starved. According to learned counsel, vague allegations are made by father informant merely of annoyance of losing daughter. That, in fact, most of the time deceased spent at her father's place. That, it is also not cogently proved by prosecution as to whether it was deliberate consumption or accidental one. He further pointed out that, no immediate neighbour is examined nor persons, who allegedly shifted deceased to the hospital, are examined to establish that it was only and only suicidal consumption. That, bald allegations are made about mental and physical cruelty without elaborate instances and nature. According to learned counsel, mere taunting would not amount to cruelty as contemplated under law.

6. According to learned counsel for appellant, essential ingredients and evidence for attracting the charges being missing, learned trial court ought not to have accepted the case of prosecution only against husband, when on self same evidence, accused no.2 to 4 are acquitted. Consequently, he prays to set aside the impugned judgment by allowing the appeal.

**On behalf of Respondent - State :-**

7. In answer to above, learned APP while supporting the judgment, would submit that, prosecution has proved the charge beyond reasonable doubt. There is cogent, consistent and convincing evidence on behalf of prosecution. That, prosecution has established that there was ill treatment, both mental as well as physical. That, testimonies of witnesses have remained unshaken and undisturbed. That, findings and testimonies are worthy of credence, learned trial Judge has rightly accepted their version. That, findings reached at by learned trial court are supported by sound reasons. That, there is correct appreciation of available evidence as well as law and as such according to him, there is no reason to interfere in such judgment. Therefore, he prays to dismiss the appeal.

## LEGAL POSITION

8. Here, though in all 4 accused were tried and charge-sheeted for offence punishable under section 498A and 306 of IPC, husband alone is convicted and rest all accused acquitted.

9. Before analyzing evidence, it would be profitable to spell out the legal requirements and settled legal position while attracting offence of section 498A of IPC.

Law is fairly settled that, for attracting the charge under section **498A** of IPC, prosecution is duty bound to prove following essential ingredients :-

- “(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.”*

**JUDICIAL PRECEDENT :**

10. As to what actually constitutes cruelty has been lucidly and succinctly dealt in the landmark cases of *Giridhar Shankar Tawade v. State of Maharashtra* (2002) 5 SCC 177, *Gurnaib Singh v. State of Punjab* (2013) 7 SCC 108, *State of Andhra Pradesh v. M. Madhusudhan Rao* (2008) 15 SCC 582, *Bhaskar Lal Sharma v. Monica* (2009) 10 SCC 604 and *K. Subba Rao v. The State of Telangana* (2018) 14 SCC 452.

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

**ANALYSIS**

**Charge under Section 498A IPC :**

12. On carefully sifting evidence of parents and brother of deceased, on the point of cruelty, it is noticed that, they are all alleging that everything was smooth for one year. However, thereafter what they deposed is that mother-in-law ill treated for not washing hair during fast. PW1 Bhagwan informant speaks about quarrel on trifle counts. He does not specify when and on what count there were quarrels. According to him, both accused nos.1 and 2 used to say her daughter to take Rs.50,000/- and to

seek divorce. But, PW2 Vimalbai attributed such allegation only against husband and not against mother-in-law. Though both parents alleged beating on instigation of mother-in-law, when it happened, has not been stated by either of them. They complained of not giving food properly and not given medical treatment during pregnancies. Informant is unable to state in which year his daughter remained pregnant. He admitted that, child died due to premature delivery. Brother PW5 Eknath also speaks about mother-in-law saying that she did not wash hair during fast, but he does not speak like his parents that there was ill treatment on such count. He merely speaks that, mother-in-law used to taunt her and beat her. Parents do not speak about beating by mother-in-law, rather they speak about she instigating husband to beat her. They are all speaking about not allowing deceased to sleep prior to 11:00 p.m.

13. In the considered opinion of this court, such accusation falls short to attract cruelty. Allegations are vague and general in nature. When such instances took place has not been stated any of them. Therefore, what is contemplated by law to attract cruelty and charge is missing from the prosecution evidence. Consequently, said charge cannot be said to be brought home.

**Charge under Section 306 IPC :**

14. All three witnesses i.e. parents and brother speak about deceased residing with them for almost a year. PW1 Bhagwan informant deposed that, after Shobhabai lost her second baby, he himself went to fetch her and accused persons sent his daughter with him and she stayed 12 months at his place. Therefore, deceased was at the house of her parents for one year. Father claims that, he was not ready to send his daughter, but on insistence of maternal sister of accused no.1, he sent her. When he sent her daughter has not been stated either by him or by PW2 Vimalbai and PW5 Eknath. Witnesses are directly speaking that, on 01.10.1998, message was received that Shobhabai was serious. Deceased died due to organo phosphorous insecticide. What happened in the proximity to 01.10.1998, has not come on record. No independent immediate neighbour is examined in spite of Investigating Officer in cross examination admitting that he recorded statement of neighbors Akilabi and Sadiq Pinjari and also recorded statements of person who shifted deceased to hospital, but none of them are examined in spite of Investigating Officer denying that, investigation revealed that, deceased was treated well. Accused are said to be dealing with vegetable business and Investigating Officer speaks of seizing tin of insecticide used for spraying on vegetables. It is not getting clear whether it was

deliberate consumption or accidental in nature. Admittedly, husband has passed information, resulting into registering AD. Therefore, what transpired on the night or in the following morning has not come on record.

15. Learned APP would strenuously submit that, appellant husband is very much available in the house. His presence is not denied. There is no explanation from him in statement under section 313 of Cr.P.C. as to how and why his wife consumed poison. According to him, as per section 106 of Indian Evidence Act, husband appellant is expected to offer explanation, but he failed to do so.

True it is that being husband and being incumbent of the house, by virtue of section 106 of Evidence Act, husband is expected to offer explanation. On visiting statement under section 313 of Cr.P.C., no explanation is coming from him except he answering that he does not know. Though section 106 of Evidence Act calls upon accused to offer explanation, but law is fairly settled that, first it is expected of prosecution to establish the charges of section 498A of IPC firmly and cogently. Initial burden to prove its case is on prosecution and only when such initial burden is discharged, only and only then accused is expected to offer explanation. Here, it is noticed that charge of section 498A of IPC

has not been proved. There is nothing to show that, there was consistent or continuous harassment or ill treatment and cruelty was of such nature that deceased was left with no other alternative, but to end up her life. Consequently, even above charge cannot be said to be proved.

16. To sum up here, there is no convincing, cogent reliable evidence about any continuous physical and mental cruelty at the hands of accused. Allegations are of taunting and commenting. Even witnesses are not consistent while levelling allegations. There is weak or no evidence on the point of sections 498A or 306 of IPC.

17. It is pertinent to note that, when on same set of evidence, mother-in-law and other accused are acquitted and therefore learned trial court ought not to have held appellant husband alone guilty for offence punishable under sections 498A and 306 of IPC.

18. On going through the judgment, there is apparently improper appreciation of evidence. Settled legal position and necessary legal requirements for attracting the charges are not considered by the learned trial Judge and learned trial Court having erred in holding accused appellant guilty, appeal deserves

to be allowed by quashing and setting aside the judgment and order. Hence, I proceed to pass the following order :-

**ORDER**

- I. The appeal is allowed.
- II. The conviction awarded to the appellant Shivaji S/o. Chaitram Chaudhary by First Ad-hoc Additional Sessions Judge, Jalgaon in Sessions Case No.213 of 1999 under Sections 498A and 306 of IPC on 07.02.2002 stands quashed and set aside.
- III. The appellant stands acquitted of the offence punishable under Sections 498A and 306 of IPC.
- IV. The bail bonds of the appellant stands cancelled.
- V. 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 regarding disposal of *muddemal*.

**(ABHAY S. WAGHWASE, J.)**