



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 119 OF 2002

1. Javed Khan s/o. Feroz Khan,
Age : 30 years, Occu. : Rickshaw Driver,
R/o. : Indira Nagar, Baijipura, Galli No.1,
Aurangabad.

2. Abeda Begum w/o. Feroz Khan,
Age : 55 years Occu. Household,
R/o. : Indira Nagar, Baijipura,
Galli No.1, Aurangabad

.... Appellants.
(Orig. Accused)

Versus

The State of Maharashtra

.... Respondent.

...
Mr. Akshay Tilve h/f. Mr. S.P. Tilve, Advocate for Appellants.
Mr. S.M. Ganachari, APP for Respondent - State
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 27th FEBRUARY, 2024

PRONOUNCED ON : 29th FEBRUARY, 2024

JUDGMENT :

1. Conviction recorded by learned IInd Additional Ad-hoc Sessions Judge, Aurangabad for offence punishable under sections 498A and 307 read with section 34 of Indian Penal Code (IPC) vide judgment and order dated 27.02.2002 is taken exception to by the convicts by filing instant appeal.

FACTUAL MATRIX

2. Husband, mother-in-law, brother-in-law and juvenile

sister-in-law were charge-sheeted by Jinsi Police Station, Aurangabad on accusations that, accused husband Javed, mother-in-law, brother-in-law and a juvenile sister-in-law shortly after marriage of complainant victim with accused no.1, there was demand of amount of Rs.5,000/- and Rs.40,000/- respectively and on its non fulfillment, they subjected victim to physical and mental cruelty. Husband beat her on instigation of others. On 27.09.1997, mother-in-law poured kerosene and juvenile sister-in-law set her to fire. She suffered 60% burns. On her report, crime was registered and finally investigated by PW4 ASI Telure.

On being charge-sheeted husband, mother-in-law, brother-in-law were tried by learned Additional Sessions Judge, who convicted them for offence punishable under sections 498A and 307 of IPC. Hence, instant appeal.

SUBMISSIONS

On behalf of Appellants : -

3. Questioning the legality, maintainability and sustainability of the judgment, learned counsel pointed out that, there is apparently weak evidence on behalf of prosecution on the count of cruelty for alleged non fulfillment of demands. Learned counsel took this court through the testimonies of both complainant and her father. According to him, evidence of father

(PW2 Yousuf) at Exh.16 is vague, omnibus, full of material omissions and contradictions. That, except evidence of victim and father there is no other independent evidence. He pointed out that, specific instances of cruelty and its form are not coming on record. According to him, essential ingredients for attracting section 498A of IPC are patently missing in the prosecution evidence.

4. He further submitted that, even charge of section 307 of IPC is apparently misdirected as essential ingredients for even attracting said charge is not available in the evidence of very complainant or her father. He pointed out that, in the very dying declaration victim reported occurrence to be accidental fire, but prosecution deliberately suppressed it. He invited attention of this court to the testimony of DW1 Shashikant, a Special Executive Magistrate at Exh.29 and would submit that this authority at the very instance of investigating machinery had recorded dying declaration of complainant, wherein she had categorically reported the occurrence as accidental burns.

5. He seriously criticized the complaint by pointing out that alleged occurrence is of 27.09.1997, but complaint is lodged after two months i.e. on 25.11.1997. Therefore, he would strenuously submit that, complaint after unexplained inordinate

delay, is apparently a false and afterthought complaint and is diametrically opposite the very statement given by none other than complainant to the DW1 Shashikant, Special Executive Magistrate.

Lastly, he submitted that, with such quality of evidence, learned trial court ought not to have return the guilty, but rather ought to have acquitted the accused. Having failed to do so, he prays to allow the appeal.

On behalf of State :

6. In answer to above, while supporting the judgment learned APP submitted that, there is initial demand of Rs.5,000/-. Second time again demand of Rs.40,000/- was raised for purchasing rickshaw for husband. On non fulfillment of the said demand, deceased was maltreated both physical as well as mental. Complainant has named husband, mother-in-law, brother-in-law and juvenile sister-in-law, who also indulged in abusing, taunting and instigating husband, who in turn beat deceased. It is further pointed out that, at about 9:00 p.m. a day before incident, after husband beat complainant with iron rod, juvenile sister-in-law declared to set her on fire. Next day i.e on 27.09.1997, around 11:00 a.m., mother-in-law brought kerosene and sprinkled it over her person and thereafter juvenile sister-in-law ignited her in the

room of husband. That, there are clear allegations in the complaint. According to him, though there is delay in lodging FIR, it is pointed out that, victim was taking for treatment for two months having suffered 60% burns. Therefore, there is plausible explanation for delay in lodging report. According to him, version of complainant is supported by father. Treating doctor has also been examined. Investigating Officer, who gathered sufficient evidence and charge-sheeted accused has also deposed to that extent and so according to learned APP there being full proof evidence, learned trial Judge committed no error in convicting accused. Hence, he prays to dismiss the appeal.

EVIDENCE ON BEHALF OF PROSECUTION

7. PW1 complainant Shahin deposed that, after marriage she resided with husband and in-laws at Baijiipura. After one and quarter month, all accused raised demand of Rs.5,000/-. Said demand was met, but again after 5 to 6 moths, there was demand of Rs.40,000/- for purchase of auto-rickshaw by husband. Remaining accused instigated accused no.1 and he thereby beat her. On 27.09.1997, accused no.2 Abeda begum brought kerosene and sprinkled it over her and thereafter juvenile sister-in-law ignited match-stick and threw on her person and set her to fire. She was taken to Ambar hospital and treated for two months,

during which she gave statement to police and she identified the same at Exh.15.

PW2 Yousuf father stated that, after one and a quarter month of marriage, there was demand of Rs.5,000/- and Rs.40,000/- respectively for purchase of rickshaw. On 27.09.1997 he got message of burns and he visited hospital. According to him, when she was recovering, she informed that, accused no.2 threw kerosene and juvenile offender ignited her.

PW3 Dr. Md. Saifuddin, who treated victim, deposed about victim being admitted on account of 60% burns. According to him, had she not received medical treatment, she would not have survive.

PW4 ASI Uttam Telure is the Investigating officer.

8. Accused has also adduced evidence of one Shashikant Bomble (DW1), Special Executive Officer at Exh.29, who deposed that on receipt of communication from Jinsi Police Station on 27.09.1997, he reached Ambar hospital and recorded her statement, wherein she stated that, while she was removing the vegetables utensil from burning stove, her veil fell on flame and she caught fire. He identified her statement at Exh.30.

ANALYSIS

9. Taking above submission into consideration and on

carefully sifting evidence of informant and her father i.e. PW1 Shahin and PW2 Yousuf, it is emerging that, informant was married to accused Javed 5¹/₂ prior to the occurrence. Her evidence is about demand of Rs.5,000/- made after and a quarter month of the marriage. Though she speaks of abuse and demand and instigation by mother-in-law, brother-in-law and sister-in-law, there are no specific instances for mental or physical cruelty allegedly meted to her. Her second allegation is of demand of Rs.40,000/- for purchase of auto-rickshaw, but exactly when such demand is made has not stated by her. Rather, she admitted in cross that, she is unable to give date or month of demands. She admitted that while she was treated, police recorded her statement, but answered that, she does not know whether Special Executive Magistrate Shri Bombale recorded her statement on 27.09.1997. She is also unable to state the date on which she was discharged from hospital.

10. Evidence of father (PW2) is regarding demand of Rs.5,000/- and Rs.40,000/-. However, he speaks of giving Rs.1,000/- which is contrary to the version of complainant, who deposed about demand of Rs.5,000/- being met. Father also in cross has answered that he does not remember the date and month of demands. After hearing his daughter's murmur, thereby naming

mother-in-law and sister-in-law, he claims to have questioned her, upon which, she allegedly told him that, accused no.2 threw kerosene and juvenile offender ignited her. That, even she told about being beaten by husband with iron rod. He claims that he advised his daughter to lodge report to police after she recovers. However, exactly on which date there was above statement to his father, has not been stated by him.

It is also pertinent to that, in evidence of complainant she speaks of husband threatening her not to name them while giving statement in hospital and accordingly she obeyed. However, her father does not speak that, she told him in hospital about any such threat by husband to not to disclose their names.

11. Resultantly, here, firstly as pointed out by learned counsel for appellant, there are vague, omnibus and general allegations about physical and mental cruelty as no specific dates or months are given by daughter and father. They are also unable to state when demand of Rs.5,000/- and Rs.40,000/- respectively was raised. Nature of ill treatment except solitary incidence of beating by husband with iron rod is not coming on record. Therefore, here, there is no reliable evidence about incessant maltreatment on the point of section 498A of IPC.

12. Charge framed for section 307 of IPC is on allegation of setting informant on fire on 27.09.1997. However, apparently report by victim informant is of 25.11.1997 i.e. after almost two months. Though prosecution came with the case that victim had suffered 60% burns and was being treated for two months, there is no medical record or discharge card to accept such version of prosecution. Consequently, there is almost two months delay which has not been satisfactorily explained by prosecution by laying any concrete foundation. Further, though father claims to have received oral dying declaration barely after eight days of admission, he did not lodge complaint against accused at that point of time itself.

13. Here, accused has adduced evidence of DW1 Shashikant Bomble, Special Executive Officer, whose testimony is at Exh.29. He apparently visited hospital to record dying declaration at the instance of Jinsi Police Station itself. He deposed about receiving statement regarding accidental burns due to fall of veil on burning flame. Informant herself gave statement about being shifted by husband for treatment. Surprisingly, there is no cross of DW1 Shashikant at the hands of learned APP. Therefore, testimony of independent witness DW1 Shashikant has remained intact and unchallenged.

SUMMATION

14. To sum up, here, there is weak, little or fragile evidence on the point of 498A of IPC. Regarding offence of 307 of IPC, apart from hopelessly delayed report, there is counter evidence of Special Executive Magistrate, who recorded statement of victim regarding suffering accidental burns. Even otherwise allegations of igniting are against juvenile accused and not present appellants. Consequently, evidence on behalf of prosecution is not free from doubt. There is no trustworthy evidence in support of the charge.

15. On going through the judgment, surprisingly learned trial court has straightaway accepted the evidence of prosecution, holding husband and mother-in-law guilty for maltreating and harassing informant in the backdrop of demand and on its non fulfillment and attempting to commit her murder by pouring kerosene. In fact, there is no legally acceptable evidence to reach to above conclusion. The observations of learned trial Judge in para 20, 21, 23, 26 and 28 of the judgment are not supported by sound reasons. Hence, in the considered opinion of this court, there is improper appreciation of evidence. Hence, interference is called for and so I proceed to pass the following order :-

ORDER

- I) Criminal Appeal stands allowed.
- II) The conviction awarded to appellants (i) Javed Khan s/o. Feroz Khan and (ii) Abeda Begum w/o. Feroz Khan in Sessions Case No. 156 of 1999 by the learned IInd Additional Ad-hoc Sessions Judge, Aurangabad on 27.02.2002 for offence punishable under sections 498A and 307 read with section 34 of Indian Penal Code (IPC), stands quashed and set aside.
- III) The appellants stand acquitted of the offence punishable under sections 498A and 307 read with section 34 of Indian Penal Code (IPC).
- IV) Bail bonds furnished by the appellants stand cancelled.
- V) The 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 in respect of disposal of muddemal.

(ABHAY S. WAGHWASE, J.)