



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 217 OF 2002

Balaji s/o Kashinath Waghmare,
Aged 43 years, Occu : Business,
R/o Block No. 19, House No. 91,
Labour Colony, Nanded.

... Appellant
[Orig. Accused]

Versus

The State of Maharashtra
Through Police Station Officer,
Police Station, Shivaji Nagar,
Nanded.

... Respondent

.....
Ms. Rekha Choudhari, Advocate h/f Mr. S. S. Choudhari, Advocate for
the Appellant.
Mr. Rajdeep D. Raut, APP for the Respondent-State.
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 24.06.2024

Pronounced on : 27.06.2024

JUDGMENT :

1. Convict in Sessions Case No. 187 of 1998 for commission of offence punishable under Sections 498-A and 306 of the Indian Penal Code [IPC], is questioning the judgment and order of conviction passed by learned Sessions Judge, Nanded dated 05.04.2002.

FACTS IN BRIEF, LEADING TO TRIAL

2. Shivaji Nagar Police Station, Nanded chargesheeted husband and in-laws for offence under Sections 498-A r/w 34 and 306 r/w 34 of IPC on the accusations that after marriage of deceased Parvatibai with accused/appellant, everything was smooth for a period of four years. As she was unable to conceive, husband used to say that he would perform second marriage. He also put up demand of Rs.15,000/- for his shop. To meet their such unlawful demand, all accused subjected Parvatibai to cruelty. That cruelty was of such nature, that she was forced to commit suicide by immolating herself on 15.08.1998.

3. On above complaint, husband and in-laws were tried by learned Sessions Judge, who, by judgment and order dated 05.04.2002, acquitted accused nos. 2 to 4 from both the charges, however held husband alone guilty for above charges and sentenced him to suffer imprisonment for two years and five years respectively, for each of the offences.

It is the above judgment and order of conviction which is now challenged by filing instant appeal.

SUBMISSIONS

On behalf of the appellant :

4. According to learned counsel for the appellant, prosecution miserably failed to establish the charges beyond reasonable doubt. According to her, there was no demand or ill-treatment as alleged. There is false, afterthought complaint out of annoyance of losing daughter. Learned counsel pointed out that none of the essential ingredients for attracting any of the charges were available, but still learned trial court has accepted the case of prosecution, that too only against appellant husband, and more particularly on same set of evidence when other accused are acquitted. She took this Court through the testimony of father, maternal uncle and other witnesses and would point out that there are general, vague and omnibus allegations about demand and ill-treatment.

5. Learned counsel further pointed out that surprisingly testimonies of ladies, who had employed deceased for working as domestic helper, has been relied by learned trial Judge, moreover when such witnesses had candidly admitted that they were not aware of the exact relations and had no personal knowledge about married life of accused and deceased. Therefore, according to learned counsel,

findings reached at by learned trial court are in absence of evidence, and judgment being against settled principles of law, she prays to set aside the same by allowing the appeal.

On behalf of the State :

6. In answer to above, supporting the judgment, learned APP would submit that there was cruelty to deceased for not bearing child. She used to report it not only to her family members, but even to the ladies at whose houses she was serving as domestic helper. That, such ladies have stepped into the witness box and have reiterated whatever they saw and heard. Accused husband had put up a demand of Rs.15,000/- for shop. He used to beat her. Learned counsel pointed out that those employer ladies PW3 and PW4 have also deposed about giving understanding to accused husband for mending his ways and not to ill-treat deceased. However, he continued to maltreat her. Only because of the same, deceased immolated herself. She suffered 100% burns and died in the very house of accused. There was no other reason for committing suicide. Learned APP would strenuously submit that the bedding on which she was found lying with burns, was itself found to be blood stained. Therefore, there is material and circumstances in support of prosecution case that there was beating

by husband. Thus, according to him, learned trial court has correctly appreciated the available evidence and further committed no error in holding appellant husband guilty and consequently he prays to affirm the judgment by dismissing the appeal.

BRIEF ACCOUNT OF EVIDENCE IN TRIAL COURT

7. Prosecution has examined in all nine witnesses to establish its case. Their role and status and the sum and substance of their evidence is as under:

PW1 Karimkhan acted as pancha to spot panchanama Exhibit 17.

PW2 Dr. Pumpale is the autopsy surgeon who conducted postmortem and opined that death was due to shock due to burns. He identified postmortem report authored by him to be at Exhibit 21.

PW3 Snehalata stated that she knew deceased because she used to work as a domestic cook in her house. According to this witness, on some occasions deceased used to narrate that her husband was ill-treating and beating her. Eight days prior to death, accused appellant had come to the house of this witness with deceased and that time, this witness gave him piece of advice to behave properly and not to ill-treat deceased.

PW4 Jaishree also claims that deceased was working as her domestic servant and as such, she knew deceased since two years prior to her death. According to this witness, deceased used to narrate to this witness that as she was not having child, she was troubled by her husband and his relatives. This witness advised her to report the same to police, but fearing more trouble, she did not file complaint.

PW5 Namdeo, father of deceased stated that his daughter was married to accused 20 to 22 years back. After four years, his daughter delivered a female child but the child died next day. For four years everything was smooth but thereafter, as his daughter did not beget child, husband, brother-in-law and in-laws were troubling her. His daughter used to tell him that as she was unable to conceive, her husband and relatives were telling her that her husband wanted to perform second marriage. That, accused husband was heavily indebted and he used to drink liquor. He also started demanding Rs.10,000/- to Rs.15,000/- from this witness for his shop. According to him, one day prior to the death, his brother Vishwanath came and informed about meeting deceased, who complained of severe ill-treatment. That, it was decided to bring her back but unfortunately on next day he learnt about the incident of burning. After four days of death, he reported police.

PW6 Vishwanath, paternal uncle of deceased stated that on 14.08.1998, i.e. one day prior to the incident, he met deceased and she narrated to him that she was being troubled by her husband and in-laws because they were demanding money and

also because her husband wanted to perform second marriage as she was not delivering child. He advised her to tolerate and then he went to the shop of accused and gave him understanding.

PW7 Desmand, a neighbour stated that on that day, while he was standing in front of his house, he saw smoke emanating from the house of accused. Door of the room was closed from inside. His friend Ahmed broke the window, entered the house and found wife of accused appellant in burnt condition. Inquest was drawn in his presence.

PW8 Police Head Constable Ankushkar is the constable who registered A.D. and handed it to the higher officer.

PW9 PSI Shetkar is the Investigating Officer.

LEGAL POSITION

8. 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 :

9. 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.

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

ANALYSIS

On charge for offence under Section 498-A IPC :

11. Though prosecution has rested its case on the evidence of in all 9 witnesses, here, evidence of only PW3, PW4, PW5 and PW6 is of relevance and significance. PW3 and PW4 seem to be the ladies who

had employed deceased in their houses as domestic helper. Therefore their evidence is taken up for appreciation at the outset.

12. PW3 Snehalata stated that she knew deceased, who was working in her house as cook. In examination-in-chief itself, she stated that, “on some occasions deceased used to narrate that her husband was ill-treating and beating her”. But in examination-in-chief itself, she deposed that, she had no personal knowledge about the incident of beating except that deceased narrated about it. She claims that 8 days prior to the incident, she gave understanding to accused husband to behave properly and not to beat deceased.

In cross, this witness had narrated about some incident involving teasing to deceased by a drunkard, of which there is no concern in this case. She admitted in cross that on her advise, accused husband had taken deceased to Gujarat for treatment of infertility. She also admitted that appellant used to provide treatment to deceased at various hospitals. She answered that she felt after death of Parvatibai that she might have died due to ill-treatment.

Above evidence of this witness shows that she had occasionally heard about ill-treatment and beating. On what count there was ill-

treatment and on what count there was beating is not stated by her. Her cross also shows that she is merely expressing suspicion about death taking place might be due to ill-treatment.

13. On visiting testimony of PW4, another witness Jaishree, who had also employed deceased, even she is found to be deposing in examination-in-chief about occasionally hearing from deceased about her married life. According to her, deceased used to narrate that as she was not having child, she was troubled by her husband and relatives. Such version is not coming from the testimony of PW3. Even wording used is, “troubled”, but in what form, has not come on record. According to this witness, 8 to 10 days prior to death, deceased hurriedly came and narrated to her that her hands and legs were tied and she was beaten and she managed to rescue herself and ran out of the house. However, in further examination-in-chief itself she stated that deceased did not give particular name but only told that her family members had attempted to beat her by tying her hands and legs. Therefore, apparently even such testimony of this witness is vague, very weak and omnibus in nature. Moreover, in cross she has admitted that she did not narrate to the police in her statement about the incident involving attempt to assault deceased by tying her hands and legs.

She too has admitted that, appellant used to take deceased to various hospitals for treatment of infertility. In cross, she answered that for the trouble given to deceased, the only reason was that she was unable to conceive child. Resultantly, this witness has attributed ill-treatment only for not conceiving, but she herself has admitted, as like PW3, that because of infertility, appellant used to provide necessary treatments to deceased.

14. It is also tried to be submitted by learned APP that blood stained cotton from the bedding was seized during spot panchanama and it is indicative of the fact of beating and ill treatment. It is true that spot panchanama Exhibit 17 does reflect seizure of blood stained cotton from the bedding on 15.08.1998, however, it is surprising to note that in CA report Exhibit 37, it is noted that seizure is received from Shivajinagar police station on 13.08.1998. How, when seizure itself is shown to be of 15.08.1998, muddemal can be dispatched on 13.08.1998 even when occurrence is shown to be of 15.08.1998. Therefore, there is utter carelessness while conducting investigation. Further, blood group of deceased is not known, nor blood of accused is shown to be collected for analysis. Therefore, though report is inconclusive, mere finding blood stains on the bedding itself will not come to the aid of prosecution on the point of beating and cruelty.

Therefore, the sum total of the evidence of PW3 and PW4 cannot be taken aid of for reaching to any conclusion as regards offence of 498-A IPC is concerned, as apparently there are general, vague and omnibus allegations like trouble and ill-treatment, without specifying or elaborating details.

15. If we further appreciate the evidence of father and uncle of deceased, it is emerging that everything was smooth for four years, but thereafter there was ill-treatment by husband. According to both, father and uncle of deceased, she narrated that as she was unable to bear child, there was trouble to her. What was the nature of trouble or its form? is also not explained by these witnesses. According to them, she used to say that if she is unable to conceive, then appellant would perform second marriage. This is not stated by PW3 and PW4 to whom deceased allegedly confided her marital life. Further, according to father, accused husband put up demand of Rs.10,000/- to Rs.15,000/- for shop, but he does not speak that on account of non-fulfillment of such demand, there was maltreatment, either physical or mental, to deceased. Even though he claims that his brother PW6 Vishwanath had visited his daughter's place one day prior to the incident and heard about severe ill-treatment, it is, firstly,

hearsay information and secondly, it is shown to be omission as both of them have admitted about not informing it during their statement to police.

16. Though PW5 father spoke about hearing from his daughter about accused husband intending to perform second marriage and ill-treating his daughter for not bearing child, but in cross he has denied that husband provided any treatment for infertility, which is contrary to the version of PW3 and PW4, who are very specific about husband providing treatment for infertility. Therefore, this witness is not giving truthful answers. There is also omission about husband intending to perform second marriage.

17. In cross, PW4 father has also admitted that his daughter narrated about ill-treatment by accused only two months prior to death and not at any point of time prior to it. Admittedly, marriage of accused and his daughter is almost two decades old. Further, PW5 father has deposed that after four days of the incident, he gave report. Surprisingly in examination-in-chief itself, he stated that he did not give any written compliant immediately, but after four days of her death, when police officer came, only then he gave statement. In cross, he admitted that he, his brother and relatives had discussion

and then decided to lodge report to police that deceased was murdered. After going to Nanded, there was discussion as to what was to be written in the complaint. Therefore, such cross clearly shows that only after due deliberation and after delay of four days, complaint was lodged.

18. Consequently, with such material coming from prosecution evidence in cross, charge of Section 498-A IPC cannot be said to be brought home or proved.

On charge for offence under Section 306 IPC :

19. As regards the occurrence of suicide is concerned, there is no evidence to show that there was cruelty, which was of such consistent and incessant nature that deceased was left with no alternative but to end up her life. Abetment to commit suicide, coupled with *mens rea* are essential for attracting Section 306 IPC. Here, involvement of appellant in abetting suicide has not been demonstrated by prosecution. On the contrary, PW7, who is prosecution's own witness, has testified that deceased immolated herself in the house by closing the door, which was subsequently required to be forced open to gain entry. This witness in cross has also admitted that husband joined in

dousing fire. Taking such material into consideration, even the charge of Section 306 IPC cannot be fastened.

20. Therefore, on taking overall view and on re-appreciation, there was no convincing evidence about ill-treatment or demand. There are general, vague and omnibus allegations about demand and ill-treatment without elaborating its mode and nature. With such weak and fragile evidence, in the considered opinion of this Court, trial court ought not to have recorded guilt of husband for offence under Sections 498-A and 306 of IPC. Essential ingredients for attracting Section 498-A as well as Section 306 of IPC, as contemplated in law, are not available in the evidence and therefore, interference is called for. Hence, I proceed to pass the following order :

ORDER

- I. The appeal is allowed.
- II. The conviction awarded to the appellant Balaji s/o Kashinath Waghmare, by learned Sessions Judge, Nanded in Sessions Case No. 187 of 1998 under Sections 498-A and 306 of IPC on 05.04.2002 stands quashed and set aside.
- III. The appellant stands acquitted of the offence punishable under Sections 498-A and 306 of IPC.

- IV. The bail bond 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.]

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