



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 224 OF 2002

Sunil Bharat Pardeshi,
Age : 27 years, Occ. : Agril.,
R/o. Savkheda Khd. Tq. Pachora,
District Jalgaon.

... Appellant.
(Orig. Accused No.1)

Versus

The State of Maharashtra,
(At the instance of PSI,
Pimpalgaon, Haareshwar P. Stn.,
C.R. No. 49/1998,
Through Public Prosecutor,
High Court Bench, at Aurangabad.

... Respondent.
(Orig. Complainant)

...
Mr. Rajendraraa Deshmukh, Senior Counsel a/w Mr. Vishal A.
Chavan i/b. Mr. Devang R. Deshmukh, Advocate for Appellant.
Mr. N. D. Batule, APP for Respondent - State
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 21st FEBRUARY, 2024

PRONOUNCED ON : 23rd FEBRUARY, 2024

JUDGMENT :

1. Deceased Asha, who consumed poison on 02.12.1998 while at her matrimonial house and died. Therefore, husband, who has been held guilty for offence punishable under sections 498A and 306 of Indian Penal Code (IPC), thereby sentencing him to suffer rigorous imprisonment for three years and five years, respectively and to pay fine, has preferred instant appeal

challenging the judgment and order passed by learned IIIrd Additional Sessions Judge, Jalgaon dated 20.04.2002 in Sessions Case No. 75 of 1999.

PROSECUTION CASE IS AS UNDER

2. Husband, mother-in-law and sister-in-law were charge-sheeted by Pimpalgaon Hareshwar police station on accusation that after marriage in 1998, when deceased Asha went to cohabit with her husband and in-laws, she was treated properly for initial period. However, subsequently, husband, mother-in-law and sister-in-law put up a demand of Rs.15,000/- to clear their loan and on such count, she was subjected to both physical and mental harassment. Deceased used to promptly report regarding such treatment meted out to her to her parents. On understanding being given, they undertook to treat her properly. However, on 02.12.1998 while deceased was in the house and in company of accused, she consumed insecticide and end up her life. Therefore, father lodged report.

3. PW10 Vinayak Lokare, who entrusted with the investigation, after gathering sufficient evidence, charge-sheeted husband and in-laws and they were made to face trial before learned IIIrd Additional Sessions Judge, Jalgaon, who conducted

trial, appreciated oral and documentary evidence and finally reached to a conclusion that prosecution established the charges, but only as against the husband and thereby held him guilty for offence under sections 498A and 306 of IPC, whereas acquitted mother-in-law and sister-in-law.

It is the above judgment and order of conviction, which is now assailed by filing instant appeal on various grounds raised in the appeal memo.

SUBMISSIONS

On behalf of Appellant :-

4. Learned Senior Counsel Shri Deshmukh on behalf of appellant would submit that, apparently implication is false and out of mere annoyance of loosing deceased. He would point out that, general and omnibus allegations are raised about demand, harassment and ill treatment without specifying and proving for what demand was made, when ill-treatment was subjected and in what manner. He further pointed out that, it is pertinent to note that on same set of evidence accused nos.2 and 3 are acquitted, but unfortunately husband alone is held guilty. According to him, except near and dear ones, no independent witnesses are examined.

5. He further pointed out that, here, there was charge for abetment to commit suicide, however prosecution had miserably failed to establish very abetment, which is essential and *sine quo non* for both framing the charge as well as recording findings to that extent. He pointed out that, there is no iota of evidence that husband abetted consumption of poison and therefore according to him, learned trial Court ought not to have held the charges proved.

6. It is next submitted that, there is said to be a dying declaration, but it is not voluntary as the very language in which alleged dying declaration is noted, was not apparently a version of deceased. That, said dying declaration does not specify the reason of consumption nor on its contents it can be said that accused abetted the suicide.

7. He took this court through the testimonies of prosecution witnesses and pointed out that, apart from not lending support to each other, there are material omissions and variances in their testimonies. He specifically pointed out that initially occurrence was reported as AD and during its enquiry nothing incriminating was revealed against husband also, but still learned trial Court has erroneously appreciated the evidence and has erred in accepting the case of prosecution as proved as regards to

husband is concerned. Consequently, finding fault in the conclusion reached at by learned trial Judge, he prays to allow the appeal by setting aside the impugned judgment.

On behalf of Prosecution :-

8. In answer to above, learned APP pointed out that, within less than a year of marriage, demand of cash was made. On its non fulfillment, deceased was subjected to both physical and mental cruelty. She promptly reported the same to her parents. Both parents have stepped into the witness box. Their testimonies have remained unshaken. Deceased has consumed poison while she was cohabiting with husband. There was no other reason except cruelty of such nature and extent that deceased was left with no other alternative, but to end up her life. Consequently, it is his submission that, husband being responsible, is rightly held guilty and so he prays not to interfere with the findings reached at by learned trial Judge.

9. Here, after hearing submissions of both sides and on going through the charges, it transpires that, apart from appellant, his mother and sister were also charge-sheeted. Admittedly, mother-in-law and sister-in-law of deceased have been acquitted by the learned trial Judge by its judgment and order dated 20.04.2002.

EVIDENCE ON BEHALF OF PROSECUTION

10. Record shows that, as many as many 10 witnesses were taken support of in the trial court for establishing charges of sections 498A and 306 of IPC. The witnesses examined are as under :-

PW1 Bhagchand father; **PW2** Kamalbai mother; **PW3** Vilas panch to spot panchanama (Exh.27); **PW4** Satish second panch to the panchanama of seizure of bottle; **PW5** Govind maternal uncle; **PW6** Kartarsing uncle of accused, **PW7** Malhari Sardar, police head constable, who recorded statement of deceased; **PW8** Dr. Pruthaviraj Chavan, examining doctor on the point of certification to give dying declaration; **PW9** Dr. Sampat Wankhede autopsy surgeon; **PW10** Vinayak Lokare, Investigating Officer.

11. On going through the above evidence, it seems that, alleged consumption by Asha is of 02.12.1998. There is no dispute that, such consumption is while she was with her husband and in-laws. It is also not in dispute that, initially AD was registered and same was inquired. Record shows that, after consumption deceased was taken to Rural Hospital, Pimpalgaon, where her dying declaration was recorded. In the dying declaration, she has stated that, mother-in-law and sister-in-law taunted her for not doing proper work and on domestic count. Husband beat her and she

was forcibly sent her parents house. Her version is that, on 01.12.1998 around 8:00 to 8:30 p.m. demand of Rs.15,000/- was raised and on its non fulfillment, she was abused and thereby her life was made miserable and consequently she consumed one spoon of poison.

Very dying declaration itself shows that husband shifted her to the hospital.

12. Apart from above dying declaration, prosecution seems to be seeking reliance on testimonies of parents PW1 Bhagchand and PW2 Kamalbai. However, on carefully going through the same, as pointed out, there are no details for repayment of which loan demand of Rs.15,000/- was made is not clear. Their evidence shows that, she was with parents for long time i.e. upto 2 to 3 days prior to the alleged consumption. Alleged consumption is of intervening night of 01.12.1998 and 02.12.1998, but what exactly triggered the occurrence is not coming on record. The above discussed dying declaration merely shows that, demand of Rs.15,000/- to repay some credit was made, but from whom credit was raised has not been investigated by Investigating Officer. There is no material in the testimonies of parents or uncle that alleged demand and cruelty was persistent, as a result of which, she was brought to the point of taking decision to end up her life. In

dying declaration apart from allegation of failure to bring Rs.15,000/-, there was taunting that she is not like by them and that she is unable to do household work, there are no serious allegations. Deceased merely narrated that, getting fed up, she consumed poison.

13. Law is fairly settled that, for attracting the charges 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.”*

However, above required essentials are not met in the available evidence. Nature of ill treatment is not clarified except taunting. What was the physical cruelty is also not specified. Even when such instances took place has not been stated by parents and

uncle in spite of claiming to be duly informed to that extent by deceased. Resultantly, allegations to that extent seem to be general and omnibus in nature.

14. Accused is convicted for offence under section 306 of IPC i.e. abetment to commit suicide. Before advertng to the merits of the evidence, it would also be fruitful to spell out 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.”

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

16. Here, evidence of prosecution is patently lacking on the point of inducement or abetment to commit suicide. No role is attributed to the husband for forcing her to end up her life. In what form husband abetted the suicide is not established.

17. It is pertinent to note as pointed out by learned Senior Counsel that, on same set of evidence, mother-in-law and sister-in-law were acquitted from both the charges, but same evidence is applied by learned trial Judge for holding husband alone responsible, without assigning sound reasons for doing so.

Resultantly, in the considered opinion of this court, on re-appreciation and re-analysis, when evidence of prosecution is falling short to attract the charges, benefit of doubt ought to have been extended by the learned trial Judge. Learned trial Judge having failed, interference is called for. Hence, I proceed to pass the following order :-

ORDER

- I) Criminal Appeal stands allowed.
- II) The conviction awarded to appellant - Sunil Bharat Pardeshi in Sessions Case No. 75 of 1999 by the learned IIIrd Additional Sessions Judge, Jalgaon on 20.04.2002

for the offences punishable under Sections 498A and 306 of Indian Penal Code, stands quashed and set aside.

III) The appellant stands acquitted of the offence punishable under Sections 498A and 306 of Indian Penal Code.

IV) Bail bonds furnished by the appellant stands 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.)