



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 320 OF 2002

Babasaheb S/o. Devidas Shinde,
Age : 25 years, Occu. : Agri.,
R/o. : Narsapur, Tq. : Gangapur,
Dist. Aurangabad.

... Appellant
(Orig. Accused)

Versus

The State of Maharashtra

... Respondent

...
Ms. Sakshi Kale h/f. Mr. A. B. Kale, Advocate for Appellant
Mr. S. M. Ganachari, APP for Respondent - State
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 1st FEBRUARY 2024

PRONOUNCED ON : 9th FEBRUARY 2024

JUDGMENT :

1. Conviction for offence punishable under sections 498A and 306 of Indian Penal Code (IPC) recorded by Ist Ad-hoc Additional Sessions Judge, Aurangabad dated 05.06.2002 in Sessions Case No. 385 of 1999, is now taken exception to by original accused Babasaheb - husband of deceased Sunita.

2. Gangapur police station registered crime bearing No.97 of 1999 and challaned accused husband and in-laws of deceased Sunita, alleging that, deceased and appellant were married in April 1999. After marriage, deceased came to reside with husband and

in-laws. For one month after marriage, deceased Sunita was treated properly, but thereafter ill-treatment began on account of demand of Rs.20,000/-. Whenever deceased came home, she reported the occurrence to her father and mother. Father assured to pay after harvest. However, after she lost her brother-in-law namely Bapu, husband and in-laws asked her to bring Rs.20,000/- more towards his share in the property. Because of the harassment and ill-treatment, on 21.07.1999 Sunita consumed insecticide and died on 22.07.1999 due to its consumption.

PW2 Ramesh father after last rituals lodged report and crime was registered. After investigation was over, accused persons were made to face trial on denial of the charge.

On appreciation of oral and documentary evidence, learned trial Judge, acquitted in-laws, but held accused husband guilty for offence under sections 498A and 306 of IPC, which is precisely questioned before this court.

SUBMISSIONS

On behalf of appellant :-

3. Learned counsel appearing for appellant would apprise this court about marriage of accused and deceased to be of

20.04.1999. She pointed out that alleged occurrence is of 21.07.1999. Learned counsel took this court through the testimony of father informant and pointed out that, allegations are vague and omnibus. She pointed out that, evidence of father shows that, deceased went to her parent's house only twice. She pointed out that, there was no previous talks at the time of settlement regarding any dowry amount agreed to be given. That, her father admitted that since one year back, marriage was decided to be performed. Brother-in-law of deceased died in 1998, and therefore, no question of seeking any share of said deceased.

4. She further took this court through the evidence of PW3 Latabai, mother and would submit that her version is contrary to that of her husband PW2 Ramesh. It is pointed out that this witness was already in the hospital for delivery of her daughter and in the same hospital deceased was admitted, but she was not informed. It is pointed out that, in cross she gave contrary version about marriage itself being settled 08 days prior to the marriage, which is contrary to the version of her husband. That, this witness had improvised her version by changing it every time.

5. It is pointed out that, PW4 Badrinath also gave similar version as that of PW3 Latabai. Evidence of PW5 Suresh,

neighbour is full of improvements, contradictions and omissions.

For above reasons, it is her submission that case has not been proved beyond reasonable doubt and she further urged that when on same set of evidence, if in-laws are acquitted, then learned trial court ought not to have recorded guilt of husband alone. Consequently, she seeks indulgence of this court in setting aside the judgment and order under challenge.

On behalf of State :-

6. In answer to above, learned APP for State would justify the conviction by submitting that, shortly after marriage, accused demanded dowry, which had remained unpaid. That, whenever deceased visited parents, she reported the occurrence. That, barely after few months deceased consumed insecticide only because of repeated demand and harassment. Death has taken place in the house of accused. Accused are solely responsible, more particularly husband and hence he prays to dismiss the appeal for want of merits.

EVIDENCE ON BEHALF OF PROSECUTION

7. In the light of above submissions and on going through the record, it is emerging that, in support of its case, prosecution has examined following witnesses and sum and substance of their evidence is as under :-

PW1 Ramdas, Police Head constable, who registered AD (Exh.25) as well as complaint by Ramesh Bobade, on the strength of which, he registered crime bearing No. 97 of 1999.

PW2 Ramesh father deposed about number of daughters and date of marriage of deceased Sunita. According to him, for one month after marriage, deceased was stated well, but thereafter there was harassment in the form of abuses and beating over demand of Rs.20,000/-. Deceased reported the same to him. He assured to pay after harvest and requested the accused not to ill-treat with deceased and sent both to Narsapur. On 22.07.1999 he received message and so visited hospital and found his daughter unconscious. After post mortem, he approached police and lodged complaint.

PW3 Latabai mother stated that, her daughter was treated well for one month, but learnt from his daughter about husband and parents-in-law beating and asking her to bring Rs.20,000/-. Deceased reported about beating and demand and also demanded share which devolved on her brother-in-law after his demise.

PW4 Badrinath claims that, he learnt from deceased about harassment caused to her on account of Rs.20,000/-i.e. when

she had come to the house one month prior to the death. He claims that he noticed burn injuries on the hand when he visited hospital to see her.

PW5 Suresh neighbour deposed that, after marriage deceased met him twice and told about beating and harassment on account of demand of Rs.20,000/-. He deposed that, deceased once told him that, they were insisting for Rs.20,000/- or else they would administer the poisonous medicine.

PW6 ASI Muley is the Investigating Officer, who narrated about all steps taken by him during investigation.

8. Here, charge for offence under sections 498A and 306 of IPC read with section 34 of IPC. Admittedly, by judgment and order dated 05.06.2002, in-laws are acquitted for want of evidence, but appellant alone is convicted.

9. For attracting offence of sections 498A of IPC, it is incumbent upon prosecution to establish essential ingredients of this section are as under :-

- “(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.”

10. Before advertng to the merits of the evidence, it would also be fruitful to spelt out regarding 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.”

11. Evidence of father and mother goes to show that, prior to the occurrence, deceased had twice paid visit to them. Accusations are of dowry demand. Father claims that, there was demand of Rs.20,000/- towards share of deceased brother-in-law of deceased Sunita. On close scrutiny of PW2 Ramesh and PW3 Latabai, the peculiar feature is that none of them have stated in clear terms, on which all days deceased had come home. Though PW1 Ramesh father speaks about his daughter being harassed, allegations are general in nature, as in what form harassment was caused either physical or mental has not been spelt out by him. Secondly, on close scrutiny of testimony of his wife PW3 i.e. mother of deceased, she does not lend support to PW2 Ramesh. She seems to have improvised and exaggerated her version. Relevant omissions and improvements are also brought in cross.

12. When there are allegations of cruelty, it is expected of prosecution to give instances, nature of ill-treatment etc. However, the same is missing in the evidence of parents. PW5 Suresh neighbour has apparently stated about threat to deceased for bringing Rs.20,000/- or else they would administer the poisonous

medicine, which is not coming in the version of very own parents of deceased. Therefore, mere vague and omnibus allegations would not itself constitute cruelty.

13. Deceased allegedly consumed insecticide. No doubt, said consumption is while she was with her husband and in-laws on 21.07.1999, however what exactly preceded prior to the consumption has not come on record.

14. 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.

15. Keeping above legal requirements in mind and testing the evidence of prosecution in case in hand, it is clearly emerging that, here, evidence of prosecution witness does not suggest as to who were present at the time of said consumption and what exactly triggered the occurrence of consumption. Therefore, in absence of any cogent and reliable evidence, it is unsafe to hold accused person guilty for abetting suicide.

16. This court has scrupulously gone through the evidence adduced by prosecution in trial court. It is apparent that, learned trial Judge has on same set of evidence acquitted parents-in-law, but has surprisingly maintained conviction of appellant-husband alone without assigning proper reasoning for the same. Learned trial Judge has not considered the necessary ingredients for attracting the charges, which were not available so as to record conviction. Therefore, for above reasons such findings and conclusion reached at by learned trial Judge cannot be allowed to

be sustained. Accordingly, I proceed to pass the following order :

ORDER

- I) Criminal Appeal No.320 of 2002 stands allowed.
- II) The conviction awarded to appellant - Babasaheb S/o. Devidas Shinde in Sessions Case No. 385 of 1999 by the Ist Ad-hoc Additional Sessions Judge, Aurangabad on 05.06.2002 for the offence 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) The appellant be set at liberty, if not required in any other case.
- 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.)