



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 428 OF 2002

Ambarsingh s/o. Tullusingh Chungde,
Aged : 28 years, Occu. : Pvt. Service,
R/o. Shiv Shambhu Housing Society,
Bajaj Nagar, MIDC Waluj,
Aurangabad.

... Appellant.

Versus

The State of Maharashtra

... Respondent.

.....
Mr. R. N. Dhorde, Senior Counsel i/b. Mr. V. R. Dhorde, Advocate for
the Appellant.
Mr. S. M. Ganachari, APP for the Respondent-State.
.....

WITH

CRIMINAL APPEAL NO. 14 OF 2003

The State of Maharashtra,
Through Police Station,
MIDC Waluj, Aurangabad

... Appellant.

Versus

Ambarsingh S/o. Tullusingh Chaungde,
Age : 28 years, Occu. : Private Service,
R/o. Shiv Shambhu Housing Society,
Bajaj Nager, MIDC Waluj,
Aurangabad.

... Respondent.

.....
Mr. S. M. Ganachari, APP for the Appellant-State.
Mr. R. N. Dhorde, Senior Counsel i/b. Mr. V. R. Dhorde, Advocate for
the Respondent.
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 22nd January, 2024
Pronounced on : 06th February, 2024

JUDGMENT :

1. Appellant convict for offence under sections 498A and 306 of Indian Penal Code (IPC) is hereby assailing judgment and order passed by Additional Sessions Judge, Aurangabad dated 03.08.2002 in Sessions Case No.274 of 2000.

2. MIDC Waluj police station filed challan against present appellant - husband and mother-in-law accusing that, after marriage, deceased Jyoti was maltreated and subjected to mental and physical cruelty on account of persistent and consistent demand of money for construction of house and also insisted for transfer of property of father of deceased in husband's name. Finally getting fed up of the same, deceased hanged herself in the house of accused, hence the charge.

3. In support of above case, prosecution has examined in all 4 witnesses i.e. **PW1** Suppadsingh - father; **PW2** Poonabai - mother; **PW3** - Shivsingh - paternal uncle and **PW4** API Arun Baste-Investigating Officer. Reliance is also placed on documentary evidence like FIR, PM report and panchanama etc.

4. Learned senior counsel Shri R. N. Dhorde instructed by Shri V. R. Dhorde would submit that, there is weak and fragile evidence. That, prosecution miserably failed to establish cruelty as contemplated under law by adducing cogent and reliable evidence. He pointed out that, except testimony of parents of deceased and her uncle, there is no other independent evidence. He took the court through the testimonies of all four witnesses and also invited attention of this court to the cross and would submit that, firstly, father and mother are not consistent and corroborating each other. Version given by mother is apparently improvised and is contrary to the version given by her husband. Secondly, it is his submission that, except stating about solitary instances of alleged pressing of neck and slapping, there is no allegation of even evidence on the point of mental torture. Thirdly, according to him, there is no evidence about PW1 Suppadsingh holding property which was allegedly sought to be transferred. He further submitted that, required ingredients for attracting charge under section 498A of IPC are patently missing.

5. It is his next submission that, there is also allegation of abetment to commit suicide, however according to him, there

is no iota of evidence in that regard. He pointed out that, father has accepted that his daughter was short tempered. That, alleged suicide is of 12.04.2000. However, according to learned Senior counsel there is no specific evidence as to what preceded alleged incident of suicide. He pointed out that, in view of said charge, prosecution was expected to establish that there was abetment and accused intended that deceased should commit suicide and with that sole intention there was ill-treatment. However, he submitted that, prosecution's evidence is absolutely silent in that regard and so he submits that for want of evidence said charge had also failed.

Lastly, he submitted that, learned trial Judge has not considered and appreciated the evidence properly and has also not considered the settled legal position. Findings being contrary to the evidence, he submits that, judgment under challenge is patently perverse and not maintainable. For all above reasons, he prays to allow the appeal by setting aside the judgment under challenge.

6. In answer to above, learned APP submitted that, shortly after marriage deceased was subjected to ill-treatment.

He submitted that evidence of parents PW1 Suppadsingh and PW2 Poonabai clearly suggest that deceased was subjected to physical cruelty and they both has stated about husband beating deceased. Such instances have taken place while deceased was cohabiting with husband. Deceased promptly report the occurrence to her parents. They have given understanding to accused, however, they did not mend their ways. He submitted that, there was consistent demand of money for construction of house and also husband demanded share in the father's property. That, deceased reported such demands whenever she visited her parent's house. Thus, it is his submission that necessary ingredients for attracting charge under section 498A of IPC being available, learned trial Court has rightly convicted the accused for section 498A of IPC. He further submitted that only because of continuous harassment and ill-treatment, deceased was forced to take the extreme step of committing suicide. He pointed out that, suicide by hanging has taken up in the house. Thus, accused are rightly held guilty. Hence, according to him, there being no merits in the appeal and the judgment and order under challenge being persistently valid, need not be disturbed with.

7. After considering the above submissions, this court

proceeds to re-appreciate, re-examine and re-analyze the evidence on behalf of prosecution. On going through the testimony of PW1 Suppadsingh - father, it is seen that, as pointed out, parents of deceased are not found to be consistent, contrary and not lending support to each other.

PW1 Suppadsingh - father in his testimony stated that, after one and half month of her marriage, husband accused had pressed neck of his daughter Jyoti at his house. Apparently it is not stated in the FIR. On visiting evidence of PW2 Poonabai, her testimony is silent about alleged episode about pressing neck after one and half month. PW1 Suppadsingh - father is found to be stating about accused husband slapping him. But, PW2 Poonabai does not refer to such incidence of slapping in presence of her. According to PW1 Suppadsingh father, deceased was telling about accused no.1 saying that, this witness should sell his property and handover the amount of sale transaction to accused no.1, whereas, PW2 Poonabai mother in her chief deposed about accused demanding gold ring and asking deceased to tell her father to transfer his property in his name. Father is apparently silent about demand of any such ornament. PW2 Poonabai speaks about receiving phone call from deceased 3 to 4 days prior to the death, conveying that

she would be intending to attend the marriage of maternal uncle's daughter. PW1 Suppadsing father is silent about it. Rather, as rightly pointed out that if deceased was to attend proposed marriage, then there is reason to infer that everything was smooth.

8. Further, on minute scrutiny of evidence of PW1 Suppadsingh, there are apparently allegation by father regarding accused demanding Rs.25,000/- for construction of the house. But, if evidence of father to this extent is carefully examined, the said demand is not by accused husband, but it is by deceased herself. PW2 Poonabai is found to be silent on that part. Version of PW2 Poonabai is apparently improvised one.

While under cross, following **omissions** are brought in the testimony of PW1:-

- (1) After one and half month of marriage, accused husband pressed the neck of his daughter.
- (2) He convinced his daughter and sent her at the house of accused.
- (3) His daughter stayed at his house for 15 days thereafter.
- (4) Lalsing coming to Mhada colony and understanding being given.

(5) One month before the incident, accused and deceased daughter had come to his house and that time deceased had demanded Rs.25,000/-.

(6) About Jyoti telling that accused no.2 is insisting to tell him that he should sale his agricultural land and handover money for the sale transaction.

However, father has admitted that, complaint was lodged after due consolidation and deliberation.

9. PW2 Poonabai, mother has apparently improvised her version to the extent of demand of one tola gold ring, deceased being told by him to ask transfer of property and that he had married deceased with said sole intention. That, during Diwali, when deceased was sought to be brought, she was not sent. Omissions are brought to the extent of payment of dowry of Rs.50,000/-, about accused seeking transfer of property and gold ring and deceased being reached at the house of Lalsing, but accused did not come to take her there.

10. PW3 Shivsingh, paternal uncle merely speaks of hearing quarrel between deceased and husband. In spite of being paternal uncle and brother of informant, he has not

uttered a single word about episode of pressing neck, demanding money for construction of house or seeking transfer of property.

11. Above discussed material shows that, firstly, specific instances with details are not coming in the evidence of parents of deceased. PW1 Suppadsingh - informant merely speaks about solitary incidence of pressing neck. Nature of ill-treatment or harassment is not stated. PW1 Suppadsingh and PW2 Poonabai are not consistent or lending support to each other. Therefore, as pointed out that, here, there is weak or no cogent evidence to attract charge under section 498 of IPC. Essential ingredients to attract the said charge are not available.

12. Likewise, in support of charge of 306 of IPC also, what exactly happened on the day of alleged hanging, has not come on record. No neighbour is examined. There is nothing in support of inducement or abetment at the hands of accused. No role is attributed to accused no.2 for attracting section 306 of IPC. It is incumbent upon prosecution to establish *mens rea* coupled with incitement, inducement or abetment to commit suicide. These crucial aspects are not available in the evidence of prosecution.

In the light of above discussed material, here, there is no convincing, clinching or strong evidence in support of any of the charge.

13. It seems that even State has preferred Criminal Appeal No. 14 of 2003, praying for enhancement of sentence awarded by learned trial Judge. However, after re-appreciation and re-analysis of the evidence, this court has held that, evidence of prosecution does not make out a case for recording guilt for which accused were charge-sheeted. Appeal thus has been allowed on re-analysis. Resultantly, the question of appeal of State for enhancement does not survive.

14. After going through the judgment under challenge, in the considered opinion of this court, learned trial court has not considered and appreciated the evidence in its correct perspective. In spite of failure to meet the essential requirements and ingredients for attracting the said charges, case of prosecution has been straightway accepted by learned trial Judge. Law has not been taken into account while recording guilt. Therefore, this court is constrained to interfere

by allowing the appeal and accordingly I proceed to pass the following order :

ORDER

- I) The appeal stands allowed.
- II) The conviction awarded to the appellant - Ambarsingh s/o. Tullusingh Chungde in Sessions Case No.274 of 2000 by learned Additional Sessions Judge, Aurangabad on 03.08.2002 for the offence punishable under sections 498A and 306 of Indian Penal Code stands quashed and set aside.
- III) The appellant - Ambarsingh s/o. Tullusingh Chungde stands acquitted of the offence punishable under Sections 498A and 306 of Indian Penal Code.
- IV) He 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.
- VII) Criminal Appeal No. 14 of 2003 filed by Appellant State stands dismissed.

[ABHAY S. WAGHWASE, J.]