



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.538 OF 2002

1. Ramhari s/o Uddhav Lamb,
Age: 22 Years, Occu.: Agri.,
R/o. Bankaranja, Tal. Kaij,
District: Beed
2. Uddhav Shamrao Lamb,
Age: 55 Years, Occu.: Agri.,
R/o. As above
3. Taramati Uddhav Lamb,
Age: 40 years, Occu.: Household,
R/o. As above

**.. Appellants
(Original Accused Nos.1 to 3)**

Versus

- . The State of Maharashtra,
Through P.S.I.
Police Station – Yusuf Wadgaon,
Tal.: Kaij, Dist.: Beed

.. Respondent

...
Advocate for Appellants: Mr. P. V. Gole h/f. Mr. V. D. Gunale
APP for Respondent / State: Mr. Rajdeep D. Raut
...

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 02.07.2024

Pronounced on : 08.07.2024

JUDGMENT :

1. In this appeal there is challenge to judgment and order of conviction passed by the learned Second Additional Sessions Judge, Ambajogai in Sessions Case No.57 of 2000, dated 27.08.2002 for offence under Section 498-A read with Section 34 of IPC.

2. Yusuf Wadgaon Police Station registered crime bearing No.70/99, on report lodged by father PW-1, who reported that his daughter Suman was married to accused Ramhari one and half year prior to the incident. At the time of marriage Rs.17,000/- was decided as dowry amount along with gold ornaments to be given to the accused. For one month his daughter was treated properly but thereafter accused started ill treating his daughter in the backdrop of demand of T.V. or cash of Rs.5,000/- When his daughter came, she reported about beating, not providing food, driving her out of the house. After one month message was received that Suman died and so he approached police and lodged report Exhibit-15, on the basis of which crime was registered bearing no.70/99 for commission of offence under Sections 498-A, 306, both read with Section 34 of IPC, against husband and in-laws.

Accused were made to face trial before the learned Second Additional Sessions Judge, Ambajogai vide Sessions Case No.57 of 2000. After appreciating the oral and documentary evidence adduced by the prosecution, learned trial court convicted accused nos.1 to 3 for offence under Section 498-A read with Section 34 of IPC, but acquitted all of them from charges under Section 306 read with Section 34 of IPC i.e. vide judgment dated 27.08.2002.

Feeling aggrieved by the above conviction of offence under Section 498-A instant appeal has been filed.

SUBMISSIONS

3. Learned counsel for the appellants pointed out that there is false implication. There is no cogent, reliable evidence about demand or cruelty.

According to him, vague allegations are made. He further pointed out that there is no independent evidence and only interesting witnesses like family members are examined. That, even they are not consistent or lending support to each other. Their testimonies are full of material omissions and contradictions. Thus, according to him, when essential ingredients of even Section 498-A of IPC were not available as like Section 306 of IPC, learned trial court ought not to have held appellants guilty. According to him, there is not only improper appreciation of evidence but also settled law has not been taken into account and, hence, he prays to set aside the said judgment by allowing the appeal.

4. In answer to above, supporting the said judgment learned APP for State pointed out that barely after one and half year deceased had died. That there was demand of colour T.V. or cash of Rs.5,000/- For meeting said demand accused persons had ill treated Suman like not providing food, beating and driving her out of the house. She had reported about it to her father, mother and uncles. They have all consistently deposed regarding the same. That, only because of ill treatment and cruelty deceased consumed poison. Therefore, learned trial court has rightly held them guilty for offence under Section 498-A read with Section 34 of IPC. So he prays to dismiss the appeal for want of merit.

BRIEF ACCOUNT OF THE EVIDENCE IN TRIAL COURT

5. **PW-1** Ramchandra father informant stated about marriage of his daughter Suman taking place with appellant Ramhari and giving dowry amount of Rs.17,000/- and ornaments. After 1 month accused started demanding T.V. or

cash amount of Rs.5,000/-. As said demand was not met his daughter was beaten, not given food, driven out of the house. According to him, accused persons administered poison to her for failing to meet the demand.

6. **PW-2** Ashrubai mother also stated that after marriage all accused who are in-laws started ill treating her daughter for demand of cash of Rs.5,000/- or T.V. They threatened her to bring T.V. or cash otherwise not to come to the house. Her daughter reported said treatment. Message was received that someone poisoned her food and she died.

7. **PW-3** Babasaheb maternal uncle stated that his niece was harassed and ill treated for bringing T.V., clothes. Her husband assaulted her on two occasions. According to him, Suman died on the day of pola festival due to consumption of poison.

8. **PW-4** Raosaheb another maternal uncle also stated that there was ill treatment, harassment to Suman for bringing T.V. During her stay at her parents place, she reported about ill treatment. After one month message was received that ill treatment to the Suman was continued therefore he gave understanding to in-laws. Then they learnt about her death.

9. **PW-5** Pandurang Investigating Officer, who narrated all steps taken by him during investigation.

10. **PW-6** Uttam Head Constable noted the F.I.R. and handed over investigation to PW-5.

11. **PW-7** Pundlik Head Constable endorsed on the complaint for registration of crime.

ANALYSIS

12. Here, though accused were charge-sheeted for offence under Section 498-A read with 34 and 306 read with Section 34 of IPC, learned trial judge on appreciation of oral and documentary evidence has held appellants guilty for offence under Section 498-A read with Section 34 of IPC only and they all are acquitted for offence under Section 306 read with Section 34 of IPC.

13. In umpteen cases the Hon'ble Apex Court has time and again dealt and discussed the requirements for attracting Section 498-A i.e. in the cases like **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.**

14. On close scrutiny of PW-1 informant's evidence, it is revealed that he has alleged that after one month of marriage accused started troubling Suman on account of demand of T.V. or either cash of Rs.5,000/-. Here, there are 4 accused. When they put up demand and what was the trouble given by

accused, is not clarified by him in his substantive evidence. He claims that for failing to meet the demand her in-laws used to beat her. Who amongst them beat is also not clarified by him. Subsequently, he alleges that she was not given food and repeatedly beaten but, again, who beat her, is not elaborated by him. He admitted in cross, para 6, that total period spent by Suman at her matrimonial house is one year. Immediately after marriage, she spent 15 days and came back. On second occasion, she stayed for 2 to 3 months and she was admitted in Ambejogai hospital for 4 months after marriage on account of leg ailment.

In cross, para 7, he answered that Suman complained that she was beaten by kicks and fist blows and on some occasion even by wooden stick, such version is not reported by him in his report to the police or even in his substantive evidence i.e. in chief.

Para 10 of his cross shows that there is omission about accused beating, driving out and deceased was reluctant to go back due to harassment. There is also omission of not providing food to Suman. Therefore, these are material omissions going to the root of very prosecution case about beating, driving out, not providing food.

15. Likewise, PW-2 mother alleged that all accused started ill treating her daughter for demand of T.V or Rs.5,000/- cash. She went to the extent of stating that all in-laws were saying to her to join their house only if she brings Rs.5,000/- or T.V. Such version is not stated by informant. There is omission in

her cross, para 5, about accused Ramhari i.e. husband beat Suman and not giving her food.

PW-3 maternal uncle stated that his niece was harassed by all in-laws for bringing T.V. and clothes. Demand of clothes is not spelt out by parents i.e. PW-1 and PW-2. This witness only attributes beating to husband in the backdrop of demand of T.V. In cross, he admitted that she did not disclose to him about ill treatment but only made disclosure when he intervened the assault on her person by her husband. He claims that one blow was given in his presence and she fell down and had suffered injury, but parents are silent about said incident. Para 5 of his cross shows that there is omission about accused demanding clothes, harassment on account of demand of T.V., about husband telling Suman that she would not be allowed to cohabit with him unless she brings T.V.

Even another maternal uncle PW-4 there is omission about accused demanding T.V., asking Suman not to return unless she brings T.V. from her parents and that Suman was reluctant to go back to the matrimonial house.

16. Therefore, parents and uncles of deceased are levelling general allegations of trouble for not meeting demand of T.V. Allegations are levelled against all accused persons by the informant but the uncle alleges demand only to husband. As discussed above, there are material omissions about beating, not giving food or driving her out of the house. With such material on record, offence under Section 498-A read with 34 of ICP cannot be said to be brought home.

17. Deceased died on 09.09.1999. Informant is alleging administration of poison. Mother merely alleges that she died merely due to harassment caused by accused. Autopsy report carried opinion that exact cause of death cannot be stated and, therefore, viscera was preserved. But, viscera, on analysis did not reveal any poison. Therefore, apparently, on account of what Suman made death is not established or substantiated so as to accept the version of prosecution that she committed suicide. Even, learned trial court has acquitted accused from charges under Section 306 read with Section 34 of IPC.

18. To sum up here, evidence on the point of Section 498-A is also apparently weak and fragile. For above reasons the said charge cannot be said to be proved.

19. On going through the judgment, there is apparently improper appreciation of evidence. Answers given by witnesses in cross including material omissions are not taken into account by learned trial judge while recording guilt of the accused for offence under Section 498-A read with Section 34 of IPC. Therefore, interference is called for. Accordingly, I proceed to pass following order :

ORDER

I) Criminal Appeal No.538 of 2002 is allowed.

II) The conviction awarded to appellants – Ramhari Uddhav Lamb, Uddhav Shamrao Lamb and Taramati Uddhav Lamb in

Sessions Case No.57 of 2000 by the learned II Additional Sessions Judge, Ambajogai, on 27.08.2002 for the offence punishable under Section 498-A read with Section 34 of the Indian Penal Code, stands quashed and set aside.

III) The appellants stand acquitted of the offence punishable under Section 498-A read with Section 34 of the Indian Penal Code.

IV) The bail bonds of appellants stand cancelled.

V) The fine amount deposited, if any, be refunded to the appellants after the statutory period.

[ABHAY S. WAGHWASE, J.]

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