



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 599 OF 2002

Yadavrao S/o. Kondbarao Jambutkar,
Aged : 32 years, Occu. : Agri.,
R/o. Shirad, Taluka Hadgaon,
District Nanded.

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

Versus

The State of Maharashtra,
Through the Police Station,
Hadgaon, District Nanded.

.... Respondent
(Orig. Complainant)

...
Mrs. Rekha Choudhari h/f. Mr. S. S. Choudhari, Advocate for Appellant
Mr. S. M. Ganachari, APP for Respondent - State
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 22nd APRIL, 2024

PRONOUNCED ON : 30th APRIL, 2024

JUDGMENT :

1. Original accused no.1 / convict is hereby taking exception to the judgment and order passed by learned Ad-hoc Additional Sessions Judge, Nanded dated 23.09.2002 in Sessions Case No. 135 of 2001, recording guilt of the appellant for offence punishable under sections 498A and 306 of Indian Penal Code (IPC).

FACTS GIVING RISE TO TRIAL ARE AS UNDER

2. Deceased Vidya daughter of informant was married to

present appellant on 28.04.1998. Indictment is on the allegation about ill treatment and demand after two months of marriage. Specific allegations are that, husband demanded amount of Rs. 40,000/- for motorcycle, whereas accused nos. 2 and 3 parents-in-law subjected Vidya to mental cruelty. Because of said ill treatment Vidya consumed poison and committed suicide. Hence, the above charge.

3. On complaint of father (PW1 Sambhaji), crime was registered and investigated by PW11 API Bhagwat, who on gathering sufficient evidence, charge-sheeted husband and in-laws for offence punishable under sections 498A and 304-B read with section 34 of IPC.

Accused faced trial and finally learned Ad-hoc Additional Sessions Judge, Nanded acquitted accused nos. 2 and 3 Kondbarao and Parvatibai from all the charges. However, only husband was held guilty for offence punishable under sections 498A and 306 of IPC. Hence the appeal.

SUBMISSIONS

On behalf of Appellant :-

4. Learned counsel for appellant would submit that prosecution has miserably failed to establish the charges beyond

reasonable doubt. She pointed out that, there is no independent convincing evidence in support of the charge of demand and cruelty. She took this court through the testimonies of prosecution witnesses and would submit that, their testimonies are not only inconsistent, but are also full of material omissions, contradictions and full of improvements. Learned counsel pointed out that, in fact, deceased was upset for not conceiving and was also suffering from health issues, and therefore, possibility of consumption by getting fed up because of personal problems cannot be ruled out.

5. Learned counsel further submitted that, parents, brother, aunt and uncle are not stating as to when exactly alleged incident of demand and ill treatment took place. According to her, allegations are general and omnibus in nature. That, on such bald allegations, case of prosecution ought not to have been accepted by learned trial Judge, and therefore, she questions its maintainability and legality.

6. Learned counsel would strenuously point out that, on same set off evidence, learned trial Judge already acquitted the parents-in-law, but unfortunately held husband alone guilty in absence of any legally acceptable evidence. She pointed out that, there is no evidence to attract section 498A of IPC. Likewise, she

pointed out that there is nothing to indicate abetment to commit suicide. Thus, she questions the findings and reasonings at the hands of learned trial court and further questions maintainability and sustainability of the judgment and order and finally she prays to allow the appeal.

On behalf of Respondent – State :

7. In answer to above, learned APP would point out that, barely after two months of marriage, husband and in-laws put up demand of Rs.40,000/- for motorcycle. That, parents-in-law taunted, commented and subjected deceased Vidya to mental cruelty. That, deceased promptly reported the treatment meted out to her, whenever she visited parent's house. That, even independent neighbour has been examined. It is pointed out that, deceased was a victim of Jaw-locking health issue. He pointed out that, autopsy doctor clarified that such health issues occur due to mental stress. Therefore, it is his submission that, there is ample evidence about cruelty. According to him, there is overwhelming evidence in support of the charge. Learned trial court acquitted in-laws, but convicted husband alone, and therefore, such findings itself shows that, there is meticulous appreciation of evidence as well as law. Consequently, he submits that there is no merits in the appeal and prays to dismiss the same.

STATUS OF THE PROSECUTION WITNESSES IN TRIAL COURT

8. **PW1** Sambhaji, Informant and father of deceased; **PW2** Parvatibai, panch to inquest and also aunt of deceased; **PW3** Ramrao and **PW4** Radhabai, panchas to spot and acquaintance of accused, did not support prosecution; **PW5** Kusum, mother of deceased; **PW6** Sandeep, brother of deceased; **PW7** Gulabrao, neighbour; **PW8** Satwa, paternal uncle; **PW9** Tukaram, panch to spot panchanama; **PW10** Dr. Suryankant Nagshettiwar is the Autopsy doctor and **PW11** Asstt. A.P.I. Bhagwat is the Investigating Officer.

GIST OF PROSECUTION EVIDENCE AND ITS ANALYSIS

9. **PW1** Sambhaji, informant father of deceased deposed that, after marriage of his daughter with accused no.1 on 28.04.1998, his daughter was treated properly for two months, but thereafter she was ill treated. His daughter told him that, there was demand of Rs.40,000/- for motorcycle. Accused nos.2 and 3 parents-in-law commented on her looks, inability to cook properly food and unable to conceive a child. His daughter came to Nagpanchmi festival and Shimga festival and she was informed about demand and ill treatment. He narrated the incidence that when his daughter went back after Nagpanchami festival, accused

no.2 had come to take her back, but his daughter was beaten by husband accused for reaching late. Accused husband removed ear-ring of his daughter and smashed by the stone. Then, he stated that, in the month of June 2001, he gave Rs.10,000/- for purchase of motorcycle. When his daughter came for Shimga festival in the year 2000, she suffered jaw-locking issue and she was given treatment and when she regained consciousness, she had told that, husband has demanded money for purchase of motorcycle and even suspected her character. When his son Sandeep visited the house of accused in June 2001, his daughter informed about the ill treatment on account of the demand. On 02.07.2001, they got the news of consumption of poison, and therefore, he lodged complaint.

While under cross, he has admitted that, he had kept his one son Kiran to the house of accused for quality education. He answered that, he came to know about the ill treatment for the first time when his daughter visited for Nagpanchami festival. He admitted that, when accused no.2 Kondbarao had come to take her back, he did not ask accused no.2 Kondbarao about the ill treatment. He admitted that, his daughter had abdominal pains and irregular menstoccles and she was given treatment for conceive a child. He admitted that, his daughter was sensitive.

In para 7 omissions are brought about payment of

dowry of Rs.65,000/-, about payment of Rs.10,000/- out of demanded amount of Rs.40,000/- towards purchase of motorcycle and about the incident at the time of Shimga festival in the year 2000. He admitted that, accused husband brought his daughter to the hospital at Hadgaon, thereafter, civil hospital at Nanded. He admitted that, he did not inform in the complaint about the episode of smashing ear-ring and beaten to his daughter. Rest is all denial.

10. **PW2** Parvatibai, though panch to inquest panchanama, is the aunt of deceased Vidya and she has also stated that accused husband demanded Rs.40,000/- for purchase of motorcycle. According to her, accused no.3 Parvatibai used to beat Vidya for not cooking properly and he used to slap her. She deposed that, father-in-law Kondbarao suspected her character, whenever she went out of the house.

While under cross in para 4, she answered that, "his niece has come to her parent's place at the time of Partani". She answered that, she does not know whether deceased Vidya had any problem of Jaw-locking. She admitted that, accused nos.1 to 3 were having happy life and they had sufficiently income. Rest is all denial.

11. **PW3** Ramrao and **PW4** Radhabai, pancha to spot and acquaintance of complainant, did not support prosecution.

12. **PW5** Kusum, mother of deceased Vidya, deposed that, they had given dowry of Rs.65,000/- and Rs.10,000/- to accused husband. According to her, accused nos.2 and 3 used to comment on Vidya that she was unable to cook and her parents are begar. When her daughter was brought to their house by accused husband, at that time Vidya had told her that the accused husband demanded Rs.40,000/- for purchase of motorcycle. She stated that her daughter told her that, the accused husband suspected her character. Vidya also shown her lap where the accused had beaten her and she sustained covert injury made by accused. She claims that, when she had been to Shirad, she met a lady, who told her that her daughter was ill treated by accused nos.1 to 3 and that she had not allowed to talk with outsiders. According to her, during second year of her marriage, accused demanded money for purchase of motorcycle. Further according to her, on the evening of Shimga, husband had beaten Vidya in their house. Due to which Vidya had suffered Jaw-locking deceased. Neighbour Gulabrao was called for treatment.

In cross, she stated that, husband did not come from first Diwali after marriage. She was unable to remember that she

stated to police regarding the incident taken place on Shimga. She answered that, at the time of Diwali festival for the first time her daughter told about demand of Rs.40,000/- for purchase of motorcycle. Omissions are brought in paragraph no. 5 about meeting a lady, who met at the village of accused and learnt from her about ill treating Vidya. She admitted that, she visited house of accused only once.

13. **PW6** Sandeep, brother of deceased stated that, for two months his sister was treated properly, thereafter there was demand of Rs.40,000/- for purchase of motorcycle. His father gave Rs.10,000/-. When he had been to the house of accused, deceased Vidya told about ill treatment and demand. Rest is all denial.

14. **PW7** Gulabrao claims to be a neighbour. According to him, one day at the evening at about 8:00 to 8:30 p.m., Vidya suffered Jaw-locking health issue and became unconscious. At that time, he was called for treatment. He asked Vidya about suffering of Jaw-locking issue, at that time, she stated that, husband harassed her while demanding Rs.40,000/- for purchasing motorcycle and husband had beaten her, and therefore, she suffering said health issue. Omissions are brought in cross about portion marked "A".

15. **PW8** Satwa, uncle also stated that, there was demand of Rs.40,000/- for purchase of motorcycle. According to him, his brother gave Rs.10,000/- to accused, but accused husband spent amount in Matka. Parents-in-law suspected her character.

In cross, he is unable to state during which month demand was made. He is also unable to state the complainant had visited the hospital police chowky on the day of death of Vidya.

16. **PW10** Dr. Suryakant Ngshettiwar, autopsy doctor, also stated in his opinion that, there is possibility of functional Jaw-locking due to mental tension on account of beating and that he was E.N.T. specialist and the jaw-locking issue is within his field of practice.

17. The only point for consideration here is, whether cruelty as contemplated under Section 498-A of IPC has been established against husband appellant.

LEGAL POSITION

18. Before advertng to the evidence and testing it, it would be apt to give a brief account of the settled law, judicial precedents as well as essential requirements for attracting offence under Section 498A of IPC.

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

As to what actually constitutes cruelty has been lucidly and succinctly dealt in the landmark case of ***Giridhar Shankar Tawade v. State of Maharashtra*** (2002) 5 SCC 177, where the Court dwelling upon the scope and purport of Section 498-A IPC has held as under:

“The basic purport of the statutory provision is to avoid ‘cruelty’ which stands defined by attributing a specific statutory meaning attached thereto as noticed herein before. Two specific instances

have been taken note of in order to ascribe a meaning to the word 'cruelty' as is expressed by the legislatures : Whereas explanation (a) involves three specific situations viz., (i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed in equally heinous to match the physical injury : whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of 'cruelty' in terms of Section 498-A."
[emphasis added]

Similar views are echoed in ***Gurnaib Singh v. State of Punjab*** (2013) 7 SCC 108, wherein it is held as under:

"Clause (a) of the Explanation to the aforesaid provision defines "cruelty" to mean "any willful conduct which is of such a nature as is likely to drive the woman to commit suicide". Clause (b) of the Explanation pertains to unlawful demand. Clause (a) can take in its ambit mental cruelty."

In State of Andhra Pradesh v. M. Madhusudhan Rao (2008) 15 SCC 582, the Hon'ble Apex Court has observed that, *"Harassment simplicitor is not cruelty. Only when such harassment is committed for the purpose of coercing a woman or any other person to meet an unlawful demand or property etc. alone would amount to cruelty punishable under Section 498-A IPC".*

In ***Bhaskar Lal Sharma v. Monica*** (2009) 10 SCC 604, the Hon'ble Apex court reiterated the essential ingredients for the said offence and pleadings which are necessary in that regard.

Very recently in the case of ***K. Subba Rao v. The State of Telangana*** (2018) 14 SCC 452, following observations are made:

“6. The Courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. The relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out.”

19. On critical analysis of evidence of PW1 Sambhaji - father; PW2 Parvatibai - Aunt; PW5 Kusum - mother; PW6 Sandeep - brother; PW8 Satwa - uncle; PW7 Gulabrao- neighbour. It is emerging that parents, brother i.e. immediate family of deceased are speaking about proper treatment for two months after marriage, but thereafter are demanded amount of Rs.40,000/- for motorcycle. There are allegations of taunting and commenting on looks, inability to cook proper food and unable to conceive. But, PW1 Samhbaji, though speaking about it, PW5 Kusum mother deposed about her daughter merely commented for not preparing food and her parents being addressed as begar.

Informant has not stated about such comments. PW5 Kusum does not speak about looks of deceased. PW5 Kusum mother is also silent about taunting for not bearing child. She speaks about suspicion of character by husband, but informant has not stated about it. Informant's evidence is silent about any episode of beating taking place on Shimga in their house itself as is stated by PW5 Kusum. Informant does not speak about episode of Jaw-lock suffered by his daughter on account of beating, which is deposed by PW5 Kusum. Brother PW6 Sandeep did not utter word about comments on looks, preparing food or not bearing child. He merely speaks of his sister telling him about ill treatment on account of demand of Rs.40,000/-. Rest of the witnesses i.e. PW2 Parvatibai, aunt and PW8 Satwa, uncle are not deposing what PW1 Sambhaji informant and his wife PW5 Kusum have deposed about it.

20. Therefore, it is apparent that prosecution witnesses are not consistent. None of them is able to specify when exactly and of what nature ill treatment was meted out. Omnibus and general allegations are made about comments. Above discussed versions of informant and his wife apparently are not corroborating each other. Therefore, required ingredients for attracting section 498A of IPC are missing. It is to be taken note of that in laws are already acquitted on same set off evidence from

offence under section 498A of IPC, but husband is alone held guilty, which is apparently improper.

21. Here, there was also charge for offence under section 304-B of IPC, but learned trial Court seems to have acquitted all the accused from the said charge and instead convicted accused husband for charge of 306 of IPC.

22. For bringing home the charge of 306 of IPC, 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.”

23. 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 specific 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.

24. Evidence of prosecution does not show at which place deceased allegedly consumed poison. There is no evidence as to who shifted her to the hospital. Papers of hospital where she was admitted are not on record. Whether consumption is suicidal or accidental was required to be demonstrated. Occurrence is said to be of 02.07.2001, deceased died on next day i.e. on 03.07.2001. Informant and other reached hospital on same day. There is no prompt complaint. After death, there was drawing of inquest, but at till such point of time, they does not seem to be any complaint. Record shows that, FIR is of 04.07.2007. Therefore, there is delayed FIR.

Unless it is cogently and firmly established that there was inducement, harassment or cruelty by husband on 02.07.2001 or immediately prior to it, it is unsafe to connect husband for death of Vidya. Initially there was no charge of 306 of IPC, but only charge of 498A and 304B of IPC. As stated above, all accused are acquitted from charge of 304-B of IPC and appellant husband is alone held guilty for section 498A and 306 of IPC. Therefore, it was incumbent upon prosecution to establish its case beyond reasonable doubt that deceased Vidya was subjected to such cruelty and only due to it, Vidya consumed pesticide and ended up her life.

As stated above, there is no independent material to shows that, because of incessant cruelty, inducement or abetment at the hands of husband, deceased Vidya committed suicide. Under such circumstances, there being weak and fragile evidence, in the considered opinion of this court, charge of abetment to commit suicide also necessarily fails.

25. Learned APP would forcefully submit that autopsy doctor has deposed that, because of beating and mental tension, there could be health issue like Jaw-lock. However, there is nothing to show that on 02.07.2001 and in proximity to it there was any beating by husband. Said episode allegedly took place at the time of festival of Shimga. Of which year said episode has taken place is not clarified by parents. On the contrary, parents are not lending support to each other as informant himself has not stated that there was beating to their daughter in their very house as is stated by PW5 mother.

26. In cross, father has admitted that, deceased was not conceiving and was being treated for the same. She was sensitive in nature. She was also said to be suffering from Jaw-locking. In medical terms such ailment is called as tetanus. It is said to be

bacterial disease that affects muscles and nerves and is said to be characterized muscles stiffness that usually involves jaw and neck. It is also said to be a rare disease and research shows that, it often occurs to older people, who are in agriculture work and come in contact with animal manure. Lack of immunization is also said to be contributing factor. Therefore, prosecution evidence itself shows that, victim was sensitive and was gripped with above ailment and was also unsuccessful in conceiving. Therefore, with such evidence on record, there seem to be other issues bothering deceased. Prosecution having failed to pinpoint abetment or cruelty at the hands of husband to be solely responsible for death of Vidya, even said charge fails. As stated above, commission of suicide itself has not been clearly, cogently and firmly established.

27. Perused the judgment under challenge. Learned trial court has apparently failed to appreciate the evidence in view of legal requirements before holding accused husband alone guilty for offence punishable under section 498A of IPC. Allegations were general and omnibus in nature. Likewise legal requirements for recording guilt under section 306 of IPC are also apparently lost sight of by the learned trial Judge. Hence, findings and reasoning being contrary to the evidence as well as law, such judgment cannot be allowed to be sustained.

28. Consequently, 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 is required to be extended by allowing the appeal. Hence following order :-

ORDER

- I) Criminal Appeal stands allowed.
- II) The conviction awarded to appellant - Yadavrao S/o. Kondbarao Jambutkar in Sessions Case No. 135 of 2001 by the learned Ad-hoc Additional Sessions Judge, Nanded on 23.09.2002 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.)