



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 605 OF 2002

Mohan s/o Kundalik Nannaware,
Age 24 Years, Occ. Nil,
R/o Jod-Georai, Taluka Paithan,
District Aurangabad.

... Petitioner
[Original Accused]

versus

The State of Maharashtra
Through The Police Station,
Bidkin, Taluka Paithan,
District Aurangabad.

... Respondent

.....
Mr. Y. B. Bolkar, Advocate for the Appellant, [appointed].
Mr. S. M. Ganachari, APP for the Respondent-State.
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 12.02.2024

Pronounced on : 15.02.2024

JUDGMENT :

1. Exception is hereby taken to the judgment and order of conviction passed by learned 2nd Additional Sessions Judge, Aurangabad, dated 14.08.2002, recording guilt of appellant for the offence punishable under Section 498-A and 306 of the Indian Penal Code [IPC] while deciding Sessions Case No. 234 of 2000.

2. In brief, case of prosecution is that deceased Savita was married to accused 10 months prior to the incident. After marriage, initially everything was smooth. However, accused and deceased shifted to Chitegaon, and one or two months thereafter, there was beating by accused to deceased. That, subsequently accused started suspecting her character and beat her mercilessly. Therefore, because of ill-treatment and consistent suspicion on her character, deceased committed suicide by setting herself on fire. Therefore, father lodged FIR, on the strength of which crime was registered and it was investigated by PW5 and after gathering sufficient evidence, accused came to be chargesheeted and further tried by learned Additional Sessions Judge for offences under Sections 498-A and 306 of IPC.

3. On appreciating the oral and documentary evidence adduced by prosecution, learned Additional Ad-hoc Sessions Judge accepted the case of prosecution as proved and convicted the appellant-accused for above offences and sentenced him to suffer rigorous imprisonment for five years for offence under Section 306 IPC and rigorous imprisonment for two years for offence under Section 498-A IPC. This judgment is now assailed before this court by filing instant appeal.

SUBMISSIONS :

4. Learned counsel for the appellant would point out that apparently there is false implication. According to him, there is no evidence in support of alleged harassment, ill-treatment or suspicion of character, neither any instances of harassment are stated by the informant father or other prosecution witnesses. According to him, deceased had committed suicide for the best reasons known to her. That, occurrence is of 05.05.2000. However, deceased died on 08.05.2000. While undergoing treatment, her dying declaration was recorded and it is pointed out that in the same, she had reported occurrence as accidental one. That, later on false case is foisted alleging harassment. He pointed out that there is no instigation or abetment to hold accused responsible for alleged death. Learned counsel took this court through the evidence of prosecution witnesses and their cross and submitted that case has not been proved beyond reasonable doubt as is expected from the prosecution. According to him, learned trial court has not appreciated the evidence as required and findings reached at are not supported by sound reasons. That, resultantly, judgment rendered is not legally sustainable and hence, he prays to allow the appeal.

5. In answer to above, learned APP pointed out that marriage is of 1999 whereas occurrence is of 05.05.2000. Deceased had suffered 68% burns. Investigation revealed that accused had been with victim on that day for cutting wood and he had mercilessly beaten her. Moreover, after reaching home, he had latched the door from outside and went away. Because of continuous harassment, beating and suspicion on character, deceased poured kerosene and immolated herself. That, out of fear and at the instance of husband, she gave false dying declaration about accidental burns. It is pointed out that father has set law into motion. There was oral dying declaration to him, wherein deceased has disclosed treatment meted out to her. His evidence has remained unshaken. Therefore, there being cogent and reliable evidence, learned trial court has correctly appreciated the same and has committed no error whatsoever in recording guilt and hence, he prays to dismiss the appeal.

6. On going through the record, it transpires that in support of its case, prosecution has examined five witnesses i.e. **PW1** Kisan (father), **PW2** Mainabai (mother), **PW3** PHC Kendre who registered AD, **PW4** ASI Pawar, who was posted at medical police chowki, Aurangabad and **PW5** PSI Devre, who registered complaint lodged by father and carried out investigation.

ANALYSIS

7. On going through the evidence of PW1 and PW2, who are parents of deceased Savita, it is emerging that marriage is of 1999. Incident of burns suffered by deceased Savita is admittedly of 05.05.2000. According to father, who stepped into the witness box and is the informant, after marriage, initially everything was smooth while deceased and accused stayed at Jod-Georai. But after their shifting to Chitegaon, according to him, **after one or two months**, PW2 went to meet her and on returning, PW2 told that Savita was not happy and that her life was not peaceful. According to him, after one month when his son Sidharth went to his sister i.e. deceased, accused did not send her and thereafter, once accused came to drop deceased but he went away from the gate itself. During her stay, deceased told that accused used to beat her questioning her for sitting outside the house and according to her, accused was trying to suspect her character. Later on, after staying for two days, she went to the house of accused. A month thereafter, brother in law of accused told PW2 that there is no good going for Savita and that she should be brought back. One or two months thereafter, he received message about Savita being admitted in hospital on account of burns and therefore he, his son and wife went to meet her. According to him, she told that

it was holiday and so she and accused went out to gather wood for fuel and in the jungle, accused mercilessly beat her saying as to why she has habit of standing outside of the house and thereafter, when they both returned home, he closed the door from the outside, latched it and went away. He further deposed that his daughter told that only due to said harassment which she was unable to bear, she set herself on fire.

In cross, he has admitted that there was no previous complaint at any point of time. He denied that deceased never told him that getting fed up of harassment, she set herself on fire. He also denied the suggestion that while igniting chimney, it fell on her and she suffered burns.

8. PW2 mother deposed that for about four to five months of marriage, her daughter was treated well, but thereafter, whenever Savita came, she reported beating by suspecting her character. She claims that when she went to the house of accused, deceased told her that accused continued beating her and that after one month, they got news about her admission in hospital wherein, when they went to meet her, she told that due to harassment of accused, she set herself on fire.

In cross, there is complete denial of almost all suggestions.

9. Rest of the witnesses are police witnesses.

10. on carefully analyzing the above evidence, except parents, there is no other independent evidence on the point of accused suspecting character of deceased and beating her. Even there is no complaint regarding the alleged beating which took place in forest by accused to the deceased i.e. on the day on which she suffered burns. Father and mother are not consistent as regards to since when harassment began. Only allegations are of beating, but specific instances are not quoted. Therefore, evidence as regards to Section 498-A IPC are patently missing from the evidence of parents. No neighbour or other relatives, who were said to be involved, are examined by prosecution.

11. Learned counsel for the appellant had invited attention of the court to the evidence of the Investigating Officer PW5 in support of his contention that deceased herself gave dying declaration about she suffering burns on account of accidental fall of chimney.

On going through the testimony of PW5 at Exhibit 18, we find him candidly admitting in cross in para 3 that dying declaration was given by deceased which was recorded by the Special Executive Magistrate and he had perused the said dying declaration. He has further candidly answered that from the evidence point of view, dying declaration was not favourable to the prosecution and therefore he has not produced it with the chargesheet.

12. When such is the evidence of very Investigating Officer, case put forth by defence about accidental burns gets fortified. Though parents claimed to have learnt from daughter in hospital about she immolated herself only out of harassment of accused, there is no immediate complaint by them. Rather, complaint seems to be lodged on 09.05.2000 i.e. one day after demise of deceased. Resultantly, with such quality of evidence, in the considered opinion of this Court, learned trial court ought not to have recorded guilt. Consequently, this court is of the opinion that there is perversity and illegality in appreciation and recording the guilt. Findings and reasons are not in consonance with the evidence on record and hence interference is called for. Accordingly, I proceed to pass the following order:

ORDER

- I. The criminal appeal stands allowed.
- II. Conviction awarded to the appellant Mohan s/o Kundalik Nannaware, by learned II Additional Adhoc Sessions Judge, Aurangabad in Sessions Case No. 234 of 2000 under Sections 498-A and 306 of IPC on 14.08.2002, stands quashed and set aside.
- III. The appellant stands acquitted of the offence punishable under Sections 498-A and 306 of IPC.
- IV. Bail bonds of appellant stand cancelled.
- V. Fine amount deposited, if any, be refunded to the appellant after the statutory period.
- VI. Mr. Y. B. Bolkar, Advocate was appointed to represent the appellant. His legal fees is quantified at Rs.10,000/- to be paid by the High Court Legal Services Sub-Committee, Aurangabad.

[ABHAY S. WAGHWASE, J.]