



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 54 OF 2004

Bhimrao S/o. Bappaji Mundhe,
Age : 31 years, Occu. : Agri.,
R/at. Lohigram, Tq. Sonpeth,
Dist. Parbhani

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

Versus

State of Maharashtra,
Through Police Station Sonpeth,
Tq. Sonpeth, Dist. Parbhani.

... Respondent.

...
Mr. S. S. Rathi, Advocate for Appellant.
Mr. A.A.A. Khan, APP for Respondent – State.
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 1st JULY, 2024

PRONOUNCED ON : 5th JULY, 2024

JUDGMENT :

1. In this appeal, there is challenge to the judgment and order of conviction dated 06.01.2004 passed by 3rd Additional Sessions Judge, Parbhani in Sessions Trial (S.T.) No. 57 of 2003, convicting appellant husband for offence punishable under section 498A of Indian Penal Code (IPC).

BRIEF BACKGROUND OF PROSECUTION CASE IN TRIAL

2. Deceased Dnyaneshwari was married to appellant and dowry amount of Rs.45,000/-, ornaments, utensils, new clothes were given to the groom appellant. That, everything was smooth

for a period of two months. According to brother informant, accused persons entertained a wrong belief that, Dnyaneshwari had received Rs.1,00,000/- after obtaining divorce from first husband. Rs.50,000/- were spent and remaining Rs.50,000/- were kept in the bank. For demand of said amount of Rs.50,000/-, accused persons started harassing Dnyaneshwari. She narrated about it, when she visited on festival. Subsequently, there was harassment on account of demand of cot, cupboard, cooler, colour T.V. On 27.12.2002, message was received that Dnyaneshwari consumed insecticide and she succumbed to the same. Therefore, PW2 Anant lodged report at Exh.33, which was made the basis of registration of crime, which was investigated by PW6 A.P.I. Bindusar Shinde, who after gathering evidence, charge-sheeted husband and in-laws for commission of offence punishable under sections 498A and 302 of IPC. At trial, prosecution adduced evidence of in all six witnesses and also relied on documentary evidence.

On appreciation of oral and documentary evidence, learned trial Judge vide above judgment and order dated 06.01.2004 acquitted all accused persons from charge of section 302 of IPC, but convicted appellant husband alone that too for offence punishable under section 498A of IPC, which is now questioned here by filing appeal.

SUBMISSIONS

On behalf of the Appellant :-

3. Questioning the legality and maintainability of the judgment, learned counsel for appellant pointed out that, prosecution has miserably failed to bring home the charge of section 498A of IPC beyond reasonable doubt. According to him, there are vague, general and bald allegations by merely alleging harassment without specifying or elaborating nature or instances of such harassment. He pointed out that, apart from delayed FIR, testimonies of witnesses are found to be full of material omissions, which goes to the very root of the prosecution case itself. In support of such contention, learned counsel took this court through the cross examinations faced by prosecution witnesses, more particularly, brother and brother-in-law of informant. He would submit that, only two such family members of Dnyaneshwari were examined. According to him, independent witnesses, like PW5 Manik, immediate neighbour has also not supported the prosecution, and therefore, according to learned counsel, prosecution had no convincing or legally accepted evidence in support of any of the charge and even evidence was lacking essential ingredients for attracting charge of section 498A of IPC. In support of above contention, learned counsel seeks reliance on

ruling of this court in the case of *Sharad Kondiba Walke v. State of Maharashtra*, 2010 All.M.R. (Cri.) 899; *Ravindra Pyarelal Bidlan and Ors. v. State of Maharashtra*, 1993 CRI. L.J. 3019.

On behalf of Respondent - State :

4. In answer to above, while supporting the judgment, learned APP would submit that, prosecution had established the charges by adducing evidence of brother informant and his brother-in-law, to whom deceased Dnyaneshwari repeatedly disclosed about the maltreatment at the hands of accused. That, whenever she came for festival, she promptly reported the acts of accused that only for demand of Rs.50,000/- and articles, there was harassment. She was kept starved and kept out of the house. That, There is clear and convincing evidence to that extent. Thus, according to learned APP, cruelty being established in the backdrop of above demand, learned trial Judge rightly convicted the accused husband and so he prays to dismiss the appeal for want of merits.

SUM AND SUBSTANCE OF THE EVIDENCE ON RECORD

5. PW1 Dr. Sidheshwar Halge, autopsy doctor, who deposed and opined death to be due to consumption of organophosphorous insecticide.

PW2 Anant informant, brother of deceased deposed about his sister's initial marriage with one Bapurao, but as he was addicted to liquor and he was beating, his sister obtained divorce from him and then her marriage performed with present appellant Bhimrao. Dowry and articles were given in marriage. For two and half months, there were harmonious relations, but thereafter husband and in-laws had misunderstanding that at the time of divorce from first husband, Rs.1,00,000/- were taken, out of which, Rs.50,000/- were spent and Rs.50,000/- were kept in bank and for said Rs.50,000/-, his sister harassed by all accused. She was beaten and kept out of the house. She reported when she came for festivals. She also reported while weeping about demand of articles like cot, cupboard, cooler and colour T.V. On 27th December, message of consumption or administering poison was received and therefore, they all went. His sister has succumbed to the same. Therefore, after last rituals, he lodged report at Exh.33.

PW3 Ramdas, brother-in-law of deceased, stated that, everything was smooth for one or two months. Somebody gave wrong information to accused that Rs.1,00,000/- were taken at the time of first divorce, out of it Rs.50,000/- were spent and Rs.50,000/- were remaining and precisely for the same, she was harassed by husband and in-laws. According to him, he came to

know about this, when he had been to her parent's house at the time of Panchami festival and Diwali festival. Dnyaneshwari narrated about ill treatment and harassment for cupboard, T.V. and fan. They beat her and kept her starved. Thereafter, on 27.12.2002 telephonic message was received that Dnyaneshwari is dead. He claims that, he noticed black and bluish marks on her person and further according to him, cause of death of Dnyaneshwari was beating, all accused holding her and administering poison. He also acted as pancha to inquest (Exh.41), pancha to spot panchanama (Exh.42) and also pancha to seizure of clothes (Exh.43).

PW4 Pandurang, pancha to memorandum of seizure of tin box, did not support the prosecution.

PW5 Manik a neighbour, deposed that, he had no knowledge as to what happened after second marriage.

PW6 API Bindusar is the Investigating Officer, who narrated all steps taken during investigation till filing charge-sheet.

ANALYSIS

6. Though appellant husband and in-laws were charge-sheeted for commission of offence punishable under sections 302 and 498A of IPC, learned trial Judge, acquitted all accused

including husband from charge under section 302 of IPC and in-laws are also acquitted from charge under section 498A of IPC. However, husband alone is held guilty for section 498A of IPC and is sentenced to suffer imprisonment.

7. As seen above, there are testimonies of informant brother PW2 Anant and PW3 Ramdas brother-in-law. PW5 Manik immediate neighbour has not supported the prosecution. Therefore, entire case of prosecution hinges on the testimonies of PW2 Anant brother and PW3 Ramdas brother-in-law.

On carefully re-appreciating the informant's evidence, it is emerging that, according to him, for two and half months everything was smooth. Thereafter, husband and in-laws, who entertained a wrong belief that, Rs.50,000/- out of Rs.1,00,000/- received from previous divorce, were in the bank, his sister was harassed by all accused. According to him, when his sister came for festival of panchami, she reported about harassment, beating and being kept out of the house for the amount. At the time of Diwali, when she came, she wept and reported about harassment for bringing cot, cooler, cupboard and colour T.V. Thus, what brother informant is repeatedly deposing is that, there was harassment to deceased by all accused. What was the form of harassment, when

and by which of the accused is not elaborated by him. Apparently, thus, allegations are omnibus in nature implicating entire family. He has already admitted that, only parents of accused husband resided with him, whereas accused nos.4 and 5 resided separately. When they all came together to inflict harassment is not clear. When there were instances of beating and by which of the accused and also when she was kept out of the house, is not clarified by informant brother. Mere term used is that, there was harassment to his sister.

In cross examination, he has admitted that, accused had irrigated land and his family was financially well off. His further cross examination carries material omissions, which are missing from the report lodged by him i.e. regarding his sister arriving for Nagpanchami festival and reporting harassment and being kept out of the house; his sister coming from Diwali festival and weeping and reporting about demand and articles and harassment in that regard. Nature of articles demanded is also not findings place in FIR. He admitted that, in spite of spending time half to $\frac{3}{4}$ hours in the police station and in spite of visit of police for inquest and spot panchanama, he did not lodge report. Apparently, in spite of occurrence taking place on 27.12.2002, report is lodged on next day i.e. on 28.12.2002, without assigning reason for delaying FIR.

8. On carefully re-appreciating and analyzing the evidence of PW3 Ramdas also, it is emerging that, he is resident of Zola, Tq. Gangakhed, Dist. Parbhani, whereas informant is resident of Waghbet, Tq. Parali, Dist. Beed and accused are shown to be resident of Lohigram, Tq. Sonpeth. Which all times he had occasion to go to informant's place or to meet deceased, has not been clarified by him. He too deposed that, Dnyaneshwari was harassed by her husband, parents-in-law accused nos.2 and 3 and accused nos.4 and 5. He claims that, he came to know about it, when he had been to Waghbet during Panchami and Diwali festival and that time, she herself narrated that there was ill treatment for Rs.50,000/- and harassment for articles like cupboard, T.V. and fan. As like brother informant, he does not speak about demand of cooler and cot being demanded. He also alleged that, there was beating and she was kept starved, but even such allegations are apparently vague and general in nature without quoting instances as to when it had happened.

9. Even his cross examination exposes that, he made no inquiry as to who informed accused about Rs.50,000/- received from previous divorce. There is omission regarding he visiting her parents house at the time of panchami festival and learning from

Dnyaneshwari about harassment for Rs.50,000/-. There is also omission about she informing him at the time of Diwali festival to that extent.

10. Therefore, the sum total of testimonies of PW2 Anant and PW3 Ramdas is that, their versions are vague and general in nature accusing husband and in-laws for harassing Dnyaneshwari. They both are merely using the word of “harassment” without specifying the form and when there was beating to her and when she was kept out of the house.

11. Learned counsel for appellant has placed on record judgment of this court in the case of *Ravindra Pyarelal Bidlan (Supra)*, wherein this Hon’ble Court had observed and held that, ‘mere harassment’ or ‘mere demand’ is not cruelty. Likewise, the Hon’ble Apex court in the landmark cases of *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, has succinctly to dealt with the scope and object of section 498A of IPC. Bearing the said settled legal position in mind and applying the same to the facts in the case

in hand, apparently, there are vague, general and omnibus allegations of harassment. Cruelty as contemplated under law is not forthcoming from the prosecution evidence.

Above all on same evidence, learned trial court has acquitted accused Nos.2 to 5 from all the charges including section 498A of IPC, but in absence of concrete role of husband, he is solely singled out and held guilty and sentenced. Consequently, the judgment under challenge cannot be allowed to be sustained. Hence, appellant succeeds and this court accordingly proceed to pass following order :-

ORDER

- I) Criminal Appeal stands allowed.
- II) The conviction awarded to appellant - Bhimrao S/o. Bappaji Mundhe in S.T. No. 57 of 2003 by 3rd Additional Sessions Judge, Parbhani on 06.01.2004 for the offence punishable under Sections 498A of Indian Penal Code, stands quashed and set aside.
- III) The appellant stands acquitted of the offence punishable under Section 498A 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.)