



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

CRIMINAL APPEAL NO. 87 OF 2004

- 1) Kailash Damu Tiwane
Age: 33 years
- 2) Santosh Damu Tiwane
Age: 35 years
- 3) Minabai Santosh Tiwane
Age: 32 years
- 4) Vijay Damu Tiwane
Age: 28 years,
- 5) Devkabai Damu Tiwane
Age: 70 years.

All residents of Maroti Peth
Jalgaon

....Appellants

Versus

The State of Maharashtra

.....Respondent

.....
Advocate for Appellants : Mr. Rajendrraa S. Deshmukh, Senior
Counsel i/b. Mr.Devang Rajendrraa Deshmukh
APP for Respondent : Mr.Chaitali Choudhari - Kutti
.....

CORAM : ABHAY S. WAGHWASE, J.

**RESERVED ON : 09 JULY, 2024
PRONOUNCED ON : 12 JULY, 2024**

JUDGMENT :-

1. Judgment and order dated 29-01-2004 passed in Sessions
Case No.108 of 2003 by 2nd Additional Sessions Judge, Jalgaon is the

subject matter of challenge in this appeal filed by appellants - convicts.

FACTS IN BRIEF LEADING TO TRIAL

2. Shanipeth Police Station, Jalgaon registered Crime bearing no.14 of 2003 on report lodged by PW1 Ramesh, who informed Police that his daughter Jyoti was married to the appellant no.1 Kailash. Out of cohabitation, they have two daughters. Whenever deceased Jyoti came, she reported that her husband and in-laws were demanding Rs.50,000/- and also taunted her for bearing girl child and on such count, Jyoti was subjected to mal-treatment and cruelty. On 08-04-2003, only because of above ill-treatment and demand, Jyoti committed suicide by jumping in the lake. Therefore, on report of Ramesh, crime was registered for offence under Sections 498-A and 306 read with 34 of the Indian Penal Code (IPC).

Crime was investigated by PW10 Patil (PSI) and after gathering sufficient evidence, accused husband and in-laws were chargesheeted, and tried by learned 2nd Additional Sessions Judge, Jalgaon vide Sessions Case No.108 of 2003.

On trial, prosecution has adduced evidence of in all ten witnesses and relied on documentary evidence. Defence has also

relied on evidence of three witness. After appreciating evidence adduced by each of the sides, learned trial Judge accepted the case of prosecution and convicted all five appellants for offence under Sections 306, 498-A read with 34 of the IPC, which is now challenged by convicts by filing appeal.

SUBMISSIONS

On behalf of appellants :

3. Criticizing the prosecution story, learned Senior Counsel for appellants pointed out that prosecution version and evidence in trial Court was palpably weak in nature. That there are mere allegations of ill-treatment without elaborating when such instances took places, or without specifying nature and form of ill-treatment. That there are simplicitor allegations for subjecting deceased to ill-treatment in backdrop of demand. He pointed out that none of the prosecution witnesses clarified as to for what and which of the accused raised demand of money and what was the amount. According to learned Senior Counsel, allegations are bald and vague in nature. According to him, cross-examination of material witnesses i.e. PW4 Ramesh, father of deceased, PW5 Sunita, distant aunt of deceased and PW6 Rohidas, maternal uncle of deceased, is firstly not consistent and is

also found to be full of material contradictions, omissions, which go to the very root of prosecution case. Consequently, it is his submission that there was no evidence to attract offence of Section 498-A of the IPC.

4. As regards allegation of suicide is concerned, he pointed out that appellants do not dispute death of Jyoti to be due to drowning, but he posed a question as to whether death of Jyoti is suicidal or accidental has not been substantiated by prosecution. To support his such contention, he even invited attention of the Court to the cross-examination of very informant father PW4, wherein father had admitted that even he was not sure whether death was suicidal, accidental or otherwise. In such set up and circumstances, learned Senior Counsel further posed a question as to how charge of Section 306 of the IPC at all could be framed and sustained.

5. On the contrary, according to him, from the prosecution version itself, it is surfacing that deceased met accidental death. That there is evidence suggesting deceased going to the Temple abutting a lake and trying to wash her limbs on a slippery place. Learned Senior Counsel apart from relying on the answers given in cross-examination by PW2 Indrajit, DW1 Ravindra and even PW10

Investigating Officer, he strenuously submitted that these witnesses have categorically admitted that deceased was seen visiting a dangerous spot where previously numerous accidental deaths have taken place and therefore, according to him, even Jyoti might have unfortunately met the same fate.

6. He lastly submitted that there is no iota of evidence in support of prosecution case about accused abetting suicide of Jyoti. He pointed out that there is no evidence suggesting inducement or abetment, which are *sine qua non* for attracting charge of Section 306 of IPC. Thus, while summing up, learned Senior Counsel would submit that with above quality of evidence on record, learned trial Court ought not to have accepted prosecution version as proved to record guilt. According to learned Senior Counsel, trial Court has failed to appreciate prosecution evidence in correct perspective and has also lost sight of settled legal position and essential requirements for attracting above charges and resultantly prays to interfere by setting aside impugned judgment.

In support of his submissions, learned Senior Counsel relied on the decision of Hon'ble Apex Court in the case of *Gangula Mohan Reddy v. State of Andhra Pradesh*, (2010), 1 SCC 750 and judgment

of this Court in the case of *Yadavrao s/o. Kondbarao Jambutkar v. The State of Maharashtra* in *Criminal Appeal No.599 of 2002* dated 30-04-2024.

On behalf of State :

7. Countering the above submissions, learned APP pointed out that there is consistent evidence of prosecution witnesses regarding demand and ill-treatment by husband and in-laws. That deceased reported her father PW4, her aunt PW5 and even her maternal uncle PW6. That appellants were unhappy as deceased Jyoti gave births to two daughters. That they were keen in having a son and for above both counts, there was cruelty meted out to Jyoti. That there are allegations against husband for beating. That only because of such harassment, deceased went up to end her life. That she jumped in the lake. That there was no other reason for her to end up her life. That cruelty meted out was of such extent that she was left with no other alternative but to end up her life. Thus, trial Court committed no error in holding husband and in-laws responsible and convicting them. Therefore, she prays not to disturb well reasoned findings and conclusion reached at by the learned trial Court.

PROSECUTION WITNESSES

8. In support of its case, prosecution has examined as many as ten witnesses. Sum and substance of their evidence is as under :

PW1 Subhash Bandu Vanjari is the spot pancha. He did not support prosecution.

PW2 Indrajit Chinubhai Shah passed Khabar exh.25 to Police that a dead body is lying in the lake.

PW3 Babukhan Imamkhan Pathan is pancha to inquest panchanama. He did not support prosecution.

PW4 Ramesh Datta Raut is father of deceased Jyoti and he is informant. He deposed about marriage of his daughter with accused no.1 Kailash and other appellants accused to be her in-laws. According to him, his daughter, during her visits to his house, informed about all accused demanding money. That there was also ill-treatment for delivering girl child. That husband accused Kailash and his brother Santosh beat her. That all accused demanded Rs.50,000/-. That on 09-04-2003, news of death of Jyoti was received, therefore, he lodged report.

PW5 Sunita Dilip Sonawane is aunt of deceased. She stated that whenever Jyoti came to her house, she told that all accused

demanded Rs.50,000/- and about ill-treatment. That they also ill-treated her for not having a son.

PW6 Rohidas Shankar Suryawanshi is maternal uncle of deceased. He stated that Jyoti met him and told that accused were rude with her for having girl child and not bringing money from her parents. That dead body of Jyoti was found in the lake.

PW7 Vijaya Raju Jadhav is first wife of accused no.1. She stated that after marriage with Kailash, he and in-laws demanded money and ill-treated her for bringing Rs.40,000/- to Rs.50,000/-.

PW8 Hiralal Madhavrao Patil (PSI) is Police Officer, who registered A.D. and conducted enquiry.

PW9 Vilas Sitaram Jadhav is the Police Officer, who recorded statements of witnesses in A.D. He has written exh.31 as per instructions of informant.

PW10 Nanasaheb Shamrao Patil (PSI) is the Investigating Officer, who recorded statements of witnesses, arrested accused and filed chargesheet.

DEFENCE WITNESSES

9. Defence has also adduced evidence of three witnesses.

DW1 Ravindra Pundalik Sapkale, is examined at exh.50. Substance of his evidence is that on 08-04-2003 while he was fishing at the lake, a lady died in the lake by drowning.

DW2 Sheikh Iqbal Sheikh Vajir is the Auto Rickshaw owner and driver, who claims that on 08-04-2003, accused no.1 Kailash hired his Rickshaw and visited 8-10 places in Jalgaon in search of his wife. She was not found.

DW3 Vitthal Tukaram Bari claimed that he knew accused and deceased. That deceased used to visit his house and he knew conduct and behaviour of deceased as well as accused. That theirs was a happy family

ANALYSIS

10. Admitted facts are that, firstly deceased Jyoti was married to appellant no.1 Kailash 5 to 6 years back; secondly, it is also undisputed that deceased Jyoti died drowning death, Moot question is whether as claimed by prosecution, it is suicide abetted by accused or it is accidental death, a stand taken by accused.

Section 498-A :

11. Prosecution has rested its case on testimony of **PW4** Ramesh, father of deceased, **PW5** Sunita, aunt of deceased, **PW6** Rohidas, distant maternal uncle of deceased and **PW7** Vijaya, who is reported to be first wife of appellant no.1 Kailash.

On going through **PW4** Ramesh, informant's evidence, according to him, during visits of his daughter, she used to tell that accused were demanding money and ill-treating her. Marriage is admittedly of 5 to 6 years old. At Which all times, Jyoti came and informed about demand and ill-treatment has not been specified by him. Nature or manner of ill-treatment is not stated by him, except stating that accused husband beat her and all accused demanded Rs.50,000/-, but for what purpose said demand was made is not specified by him. Second allegation is that there was ill-treatment for delivering daughters only and not son. That accused nos.1 and 2 beat his daughter Jyoti.

Paragraph 8 of the **cross-examination** of informant goes to show that there is omission that accused nos.1 and 2 beat Jyoti. He has offered explanation that as Police told him not to give details and state before the Court, his report is silent on that point. There is also omission that both accused saying that if informant did not like their

conduct, then he should take away Jyoti.

PW5 Sunita, who seems to be distant aunt of deceased, claims that whenever Jyoti visited her house, she stated that all accused demanded Rs.50,000/- and ill-treated her. Therefore, she has also made general allegation. According to this witness, deceased requested this witness to ask her own parents to give money to accused, but admittedly PW4 Ramesh has not uttered anything about his daughter also informing PW5 Sunita about the demand of money and ill-treatment. This witness has not attributed allegation of beating to accused no.2 Santosh, but she alleges that deceased told her that husband beat her because she did not have son.

In paragraph no.4 of **cross-examination**, there is omission about deceased requesting her to ask her parents to give money; that accused no.1 beat her. There is also omission about deceased asking her how long she should bear ill-treatment.

PW6 Rohidas is distant maternal uncle of deceased. On visiting his evidence, he seems to be resident of Surat and though he claims to have interacted with deceased, he did not speak about demand of Rs.50,000/-, but according to him, accused were talking to her in rude manner.

Likewise, **PW7** Vijaya, first wife of accused no.1 Kailash,

though stated that all accused demanded money and ill-treated her, her **cross-examination** shows that demand of accused to the tune of Rs.40,000/- to Rs.50,000/- to her, is a omission. Infact her cross-examination shows that she had on her own been to Police Station to give statement that too on 12-04-2003 and not immediately.

12. Therefore, on the point of charge of Section 498-A of the IPC, above is the only evidence. Including informant father none of the witnesses are defining or clarifying role of accused distinctly. Allegations about beating are found to be material omission. Consequently, their versions are apparently improvised before the Court.

Section 306 :

13. Dead body of deceased Joyti was found floating in Mehrun lake on 08-04-2003. Father alleges suicide and holds accused responsible for the same, but in paragraph 13 of cross-examination, he has categorically answered that he does not know whether his daughter was pushed into the lake or she jumped into the lake or she fell in the lake accidentally.

Even learned APP candidly admitted that there is no distinct evidence to show that what happened on 08-04-2003. Admittedly

accused are residing at Jalgaon. Inquest panchanama and spot panchanama shows that death has taken place at Mehrun lake. Accused are shown to be residents of Maroti Peth, Jalgaon. Learned APP, to a Court query, answered that distance between house of accused and scene of occurrence is of almost 14 km. Dead body was noticed in Mehrun lake on 08-04-2003 and PW2 Indrajit reported the same to Police vide exh.25. Dead body is noticed at 11:00 a.m. How and when deceased reached the lake is a mystery. Presence of accused is not substantiated on said day or even earlier day. What role accused played, or how they abetted or induced deceased has not come on record. For attracting charge of Section 306, participation and active role of accused is required to be proved. As stated above, informant father and other witnesses are merely alleging ill-treatment and beating. Aspect of beating is material improvement as it is not finding place in the FIR or their statements. Therefore, aspect of cruelty is not forthcoming in the evidence of prosecution.

14. Specific case of accused is that deceased must have met accidental death. Heavy reliance is placed on cross-examination of DW1 Ravindra, a fisherman. This witness stated that he had earlier

seen this woman 2-4 times washing her hands and legs before going to the temple. He in examination-in-chief itself has stated the place where she washed her hands and legs is not proper and previously he had seen 8-10 accidents occurred at that place including the death of his own nephew.

15. **PW2** Indrajit, who has passed information of seeing dead body, in paragraph 2 of cross-examination, admitted that the place near the lake is slippery and several accidents of slipping and drowning had taken place. As stated above, informant father in cross-examination has expressed his inability to state whether his daughter jumped in well or fell accidentally.

It is fairly settled position of law that accused is merely expected to probabalize the defence and he need not substantiate his case. Here material brought on record by defence does show that there is possibility of accidental death. Therefore, for above reasons, defence has succeeded in probabalizing their case.

16. Therefore, to sum up, her essential ingredients for attracting offence under Sections 498-A and 306 read with Section 34 of the IPC are patently missing in the entire prosecution evidence. Evidence is apparently weak, insufficient and fragile. Prosecution is expected

to prove charges beyond reasonable doubt by adducing cogent and reliable evidence. However, in the case in hand, with the quality of evidence available on record, in the considered opinion of this Court, prosecution has failed to do so.

On going through the impugned judgment, it is noticed that the learned trial Court has apparently lost sight of essential ingredients for attracting charges under Sections 498-A and 306 read with Section 34 of the IPC. What was the source to the finding of the trial Court, more particularly in paragraph 50 of the impugned judgment that evidence proves that there was quarrel between accused no.1 Kailash and deceased Jyoti immediately before her death, is not clarified by assigning sound reasons. Infact there is no evidence that immediately prior to the incident, there was any quarrel, as none of the prosecution witnesses deposed to that extent.

17. Testimony of **PW7** Vijaya seems to be prevailed much over conclusion drawn by the trial Court, however, learned trial Court does not seem to have appreciated that, after coming across a news item, she herself has approached Police and gave statement, which also, as deposed above, is full of material omissions. Similarly, observations of trial Court in paragraph 57 of the impugned

judgment that there is cogent evidence about consistent harassment, is also without any source material. None of the witnesses including informant speaks of incessant or continuous harassment or ill-treatment. Resultantly, there is apparently improper appreciation of evidence and findings are not supported by sound reasons, necessitating interference at the hands of this Court. Accordingly, I proceed to pass following order :

ORDER

- I) Criminal Appeal No.87 of 2004 is allowed.
- II) The conviction awarded to appellant nos.(1) Kailash Damu Tiwane (2) Santosh Damu Tiwane (3) Minabai Santosh Tiwane (4) Vijay Damu Tiwane and (5) Devkabai Damu Tiwane in Sessions Case No.108 of 2003 by the learned 2nd Additional Sessions Judge, Jalgaon on 29-01-2004 for the offence punishable under Sections 306 and 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 Sections 306 and 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 appellants 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)
JUDGE