



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 90 OF 2004

1. Madan s/o Baburao Zodge
Age: 28 years, Occu.: Labourer
2. Sulabai w/o Baburao Zodge
Age: 60 years, Occu.: Household

Both R/o Jamkhed, Tq.Ambad,
Dist.Jalna.

(As per Court Order dated
20-02-2013, appeal is abated
against appellant no.2)

..Appellants
(Original Accused No.1 & 2)

Versus

. The State of Maharashtra ..Respondent

.....
Advocate for Appellants : Mr.S.K.Barlota
APP for Respondent : Mr.Rajdeep D.Raut

.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 22 JULY, 2024

PRONOUNCED ON : 31 JULY, 2024

JUDGMENT :-

1. Appellants are questioning the judgment and order passed by learned Sessions Judge, Jalna dated 27-01-2004 convicting appellants for offence under Sections 498A, 306 read with 34 of the Indian Penal Code (IPC).

2. It is to be mentioned here that during pendency of the appeal, appellant no.2 namely Sulabai w/o Baburao Zodge, who is original accused no.2, died, therefore, by order of this Court dated 20-02-2013, appeal stood abated against her. Consequently, appeal of only appellant no.1 has now remained for consideration.

PROSECUTION CASE IN NUTSHELL

3. PW1 Rajendra, brother of deceased Savita, approached Ambad Police Station reporting that his sister Savita was married to appellant no.1 three years prior to suicide. That accused no.2 was mother-in-law of deceased. That after one year, there was physical and mental cruelty to Savita on account of demand of Rs.10,000/-. That his sister was made to do agricultural work without providing sufficient food. That husband also suspected chastity of his sister. That all this was reported by Savita to him. That getting fed up of ill-treatment, Savita committed suicide by jumping in well.

Therefore, he lodged report exh.27, on the basis of which investigation was carried out and on its completion, appellant no.1 husband and appellant no.2 mother-in-law were chargesheeted for above offence and they were tried before learned Sessions Judge, Jalna, who on appreciating the evidence, accepted prosecution case

as proved and by its judgment and order dated 27-01-2004, held both accused guilty and convicted them accordingly.

Said judgment of conviction is taken exception to by filing instant appeal.

SUBMISSIONS

On behalf of appellant no.1 :

4. Questioning the guilt, learned Counsel for the appellant no.1 would submit that there is false implication. That there is no reliable, cogent or independent evidence in support of allegation of ill-treatment either physical or mental. That there are vague and general allegations. That chargesheet was filed for offence under Sections 304-B and 498-A of the IPC, however, learned trial Court has convicted appellants for offence under Sections 306 and 498-A of the IPC. He pointed out that there is weak or no evidence about abetment to commit suicide. That family members, who are interested witnesses are also not consistent. Therefore, prosecution having not proved the case beyond reasonable doubt, according to him, learned trial Court ought not to have accepted the case of prosecution for offence under Sections 498-A and 306 of the IPC.

On behalf of State :

5. In reply, learned APP pointed out that all witnesses are consistent. That after one year, there was demand of Rs.10,000/- and both husband and mother-in-law indulged in subjecting cruelty to deceased Savita. That they made her do excess agricultural work. That they kept her starved. That husband suspected her fidelity and on instigation of mother-in-law, husband beat her. That she has narrated the ill-treatment meted out by accused to her brother and two sisters, who have deposed to that extent. That there is ample evidence about cruelty. That only because of cruelty and ill-treatment, deceased jumped in the well and committed suicide. That there was no other reason for her to commit suicide. He submitted that as husband and mother-in-law are solely responsible, according to him, learned trial Court has correctly held them guilty and he prays to dismiss the appeal.

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

STATUS OF PROSECUTION WITNESSES

PW1 Rajendra Muralidhar Sonvane is brother of deceased and also an informant, who has set law into motion.

PW2 Parvatibai Arjun Dhule is elder sister of deceased.

PW3 Pralhad Deorao Tambe is maternal uncle of deceased.

PW4 Taherabee Sk.Abdul Kumbhar is Pancha to inquest panchanama exh.31.

PW5 Gumphabai Rameshwar Khandebharad is the another elder sister of deceased Savita.

PW6 Gajanan Rambhau Chavan is resident of same village and on request of accused no.1, he participated in search of Savita.

PW7 Vishwanath Rachappa Sahasashte is Medical Officer, who conducted post mortem of deceased and issued opinion regarding cause of death due to asphyxia due to drowning.

PW8 Bapurao Ramdas Patil is Police Head Constable, who registered A.D. and thereafter, made enquiry.

PW9 Jaswantsinha Kashiramsinha Hushare is the Investigating Officer, who registered crime and after completion of investigation, arrested the accused.

7. Learned trial Judge, on appreciating oral and documentary evidence, has convicted appellants husband and mother-in-law for offence under Sections 498-A and 306 of the IPC.

Charge under Section 498-A :

8. As regards charge under Section 498-A is concerned, as to what actually constitutes cruelty has been lucidly and succinctly dealt in the landmark cases of *State of West Bengal v. Orilal Jaiswal* [(1994) 1 SCC 73]; *Giridhar Shankar Tawade v. State of Maharashtra* (2002) 5 SCC 177; *State of Andhra Pradesh v. M. Madhusudhan Rao* (2008) 15 SCC 582; *Bhaskar Lal Sharma v. Monica* (2009) 10 SCC 604; *G. V. Siddaramesh v. State of Karnataka* (2010) 3 SCC 152; *Gurnaib Singh v. State of Punjab* (2013) 7 SCC 108 and *K. Subba Rao v. The State of Telangana* (2018) 14 SCC 452.

ANALYSIS

9. Keeping in mind settled legal position in above rulings, evidence is re-appreciated and re-evaluated i.e. of PW1 Rajendra, brother of deceased, PW2 Parvatibai, sister, PW3 Pralhad, maternal uncle and PW5 Gumphabai, sister of deceased.

10. **PW1** Rajendra, brother of deceased and informant deposed as under :

“In the beginning for about one year the accused treated her well. Thereafter, the accused started to cause mental cruelty to

my sister. Accused used to make a demand of Rs.10,000/- from me through my sister as amount of dowry. They used to ask her to bring the said amount from me. Accused used to ask my sister to do the agricultural work in empty stomach, they never used to supply her sufficient food and caused her starvation. On my visit to her place on 06-09-2000, she disclosed about above ill-treatment given to her by accused. Before that for four months my sister was staying in the house of elder sister at Parner. Accused used to suspect about the chastity of sister Savita. Accused brought her to Jalna to test her pregnancy. Doctor told that she was not pregnant and thereafter accused left Savita to her elder sister's place at Parner. Thereafter, Savita went to house of another sister Parvatibai and stayed there for 2-3 days. Parvatibai sent her back to accused. But thereafter accused was giving ill-treatment to her. Thereafter, 4-5 days, my sister Savita went to my maternal uncle's place and stayed there for ten months. Accused went to take her and on promise given to his maternal uncle that he will give good treatment to Savita, he brought her to his house. Then after three months I went to see my sister Savita. That time she told that mother-in-law instigate and husband ill-treat and beat her

and she also told that accused husband asked her to bring money from me. I pacified her and went to my village on 07-09-2000.”

He further deposed that on 08-09-2000, he received a phone message from his sister Parvatibai informing that Savita had been beaten by husband and she asked whether Savita had come to his village. Therefore, he went to Jamkhed and lodged missing report. On 09-09-2000, dead body of his sister traced in the well.

In **cross-examination**, he admitted that his sister Parvatibai resides in the same locality where accused resided. He admitted that first wife of accused no.1 namely Laxmibai still resides with him and cohabit with him and that his mother and sister Parvatibai arranged marriage of his sister Savita with accused no.1 because there was no issue from first wife. He admitted that accused no.1 incurred marriage expenses.

Omission is brought in paragraph 5 of cross-examination regarding accused no.1 used to suspect about chastity of his sister and this is got proved through the Investigating Officer.

11. **PW2** Parvatibai, sister of deceased, deposed as under :

“After the marriage, accused no.1 treated well to my sister for

one year. Thereafter, my brother Rajendra sold his agriculture land and then accused no.1 started demanding Rs.10,000/- from Rajendra. My brother refused to pay, therefore, accused started ill-treating Savita. Both accused started ill-treating to my sister. Accused no.1 used to beat my sister on instigation of accused no.2. Savita used to tell me said fact. My elder sister Gumphabai resides at Parner. That my sister Savita went to her and stayed there for 4 months. As she stayed there for 4 months, therefore, accused no.1 suspected about her character alleging that she remained pregnant and also suspected that she had illicit relations with husband of my sister Gumphabai namely Rameshwar. Then accused no.1 took Savita to Jalna to some Doctor and got examined her. That Doctor disclosed that, she is not pregnant. Thereafter, again accused reached at house of her elder sister at Parner. Then after 2-3 days Savita came to Jamkhed. Accused no.1 refused to receive her and do not allow to stay in the house. Therefore, she had came to me and stayed at my house for 2-3 days. Thereafter, I sent her to house of my maternal uncle Pralhad Tambe at Thergaon. She stayed there for 10 months. After that, accused no.1 went to the house of my maternal uncle and he received back to Savita by giving

assurance as he will treat her well. Again he started ill-treating her. Thereafter, on the day of festival of Mahalaxmi, my brother Rajendra had come to me and that time Savita met him and narrated the facts to him. My brother Rajendra came to me on 06-09-2000 and on 07-09-2000 he went back to his village. On the very day, in the evening, accused no.2 came to me and enquired about Savita and I told her that she did not come to me. On next day, I informed her brother and asked whether Savita had come to him. He replied that she did not come there. On receiving phone on 08-09-2000, my brother Rajendra came to Jamkhed and asked accused no.1 about my sister Savita, but he did not tell anything. Thereafter, we came to know that dead body of Savita was found in the well.”

She further deposed that she suspected that accused no.1 pushed her sister in the well.

In **cross-examination** she admitted that she resides in the same locality of accused, accused no.1 was already married with another lady namely Laxmibai and both accused and said lady Laxmibai resided together. She admitted that as accused no.1 had not issue from first wife, he preferred to marry her sister. She admitted that maternal uncle did not attend marriage.

In paragraph 5 of cross-examination omission is brought about accused no.1 suspecting chastity of Savita and about her illicit relations with husband of my elder sister Gumphabai. There is omission about her sister pushed in the well.

12. **PW3** Pralhad Deorao Tambe is maternal uncle of deceased. He deposed as under :

“Initially for 6 months, accused treated her well. Thereafter, he started demanding Rs.10,000/- towards dowry from brother of Savita. Both accused beat Savita for demanding said amount. Since Savita was ill-treated by husband, she came to reside with her sister Gumpha at Parner. Then accused suspected that Savita had illicit relations with husband of Gumpha. He took her to the hospital to test her pregnancy, but finding her not pregnant, he dropped her to house of Gumpha and alone went to village. Then Savita went to her sister Parvati at Jamkhed. Before that, she had been to accused and that time, accused refused to receive her. Then Savita was sent to me and she stayed in my house for 10 months. Accused came to receive her and gave assurance that he will not ill-treat Savita and thereafter, she was sent back for cohabitation. After 6 months,

her brother Rajendra had been to see her, that time accused demanded Rs.10,000/- from Rajendra. Accused ill-treated Savita again and again.”

Even this witness suspected that accused might have committed murder of Savita and her dead body was thrown in the well.

In **cross-examination**, he admitted that he came to know from Rajendra about ill-treatment given by accused to Savita. He admitted that she was living in his house for 10 months and she was living in the house of Gumphabai for 4 months.

In further cross-examination, omission is brought regarding suspicion by him about accused committing murder of Savita and throwing her dead body in the well.

13. **PW5** Gumphabai Rameshwar Khandebharad is elder sister of deceased Savita. She deposed as under :

“Her sister was treated well for 12 months and thereafter, accused started ill-treatment. Accused no.1 beat Savita at the instigation of his mother accused no.2. Similarly, they used to cause starvation to her. My brother sold his field, therefore, accused used to ask Savita to bring Rs.10,000/-. He used to

make the said demand as dowry amount. Thereafter, accused left Savita at my house. She stayed with me for 4 months. Accused suspected about her husband that Savita remained pregnant from illicit relations with her husband. Then accused no.1 took Savita for medical test but nothing detected. Then again he brought Savita to my house at Parner, where she stayed for 2-3 days. Thereafter, she went to accused no.1, but he refused to receive her. Therefore, she went to my another sister Parvatibai at Parner and she lived 3-4 days and thereafter she lived at her maternal uncle's place for 10 months. After accused no.1 assuring to treat her well, Savita was sent back with him. But accused continued to ill-treat her sister."

She further deposed that on a day accused beat her sister and pushed her into the well.

Omission is brought to the extent that accused suspected illicit relations between her husband and Savita; that accused pushed her in well.

14. On carefully analyzing and sifting above testimonies, the distinct features, which are conspicuously emerging are that, deceased Savita was married in Mahadeo Temple with appellant

husband inspite of appellant no.1 already married to Laxmibai and their marriage was legally subsisting. There is no legally acceptable proof of marriage of Savita with appellant no.1. It is also emerging that it is the mother and Parvatibai sister of deceased, who were instrumental in performing alleged marriage of Savita with accused no.1 because accused no.1 did not bear child from Laxmibai. Therefore, above discussion and material categorically shows that Savita was infact not a legally wedded wife of appellant no.1.

15. On carefully perusing testimony of **PW1** Rajendra, informant brother, it is noticed that he merely deposed about mental cruelty to his sister in the backdrop of demand of Rs.10,000/- as a dowry, but he has not whispered neither his other sisters or maternal uncle whispered any dowry fixed at the time or before the marriage. Admittedly, at the time of death of Savita, their marriage was three years old.

Second allegation by informant brother is that his sister was made to do agricultural work without giving sufficient food and that husband used to beat on instigation of mother-in-law and accused no.1 used to suspect her chastity. He merely used word that his sister was ill-treated.

He in **cross-examination** has admitted that he is unable to state or quote the instances when above ill-treatment was inflicted. Material omission is brought about accused suspecting chastity of his sister.

Likewise, evidence of **PW2** Parvatibai, sister of deceased also shows that there are allegations about accused ill-treating her sister. She has attributed only beating to accused no.1 husband on instigation of accused no.2. She further alleges that accused were making her do excess agricultural work by providing insufficient food or keeping her starved. Though she stated that accused suspected character of Savita, it is shown to be an omission, which is got proved through the Investigating Officer. Even she has not specified instances or manner of ill-treatment. She has alleged that accused pushed her sister, but it is also shown to be an omission. Therefore, like brother of deceased, even this witness i.e. sister of deceased has improvised her version on material counts.

16. **PW3** Pralhad, maternal uncle of deceased is found to be alleging ill-treatment since after six months only, when very brother and sisters of deceased are deposing about Savita being treated well for one year. Even he stated differently then what was stated by PW1

Rajendra and PW2 Parvatibai, as according to him, both accused beat Savita on demand of amount. Rather PW1 Rajendra, brother and PW2 Parvatibai and PW5 Gumphabai, sisters, alleged instigation by accused no.2 and beating by accused no.1.

Infact **cross-examination** of this witness goes to show that deceased Savita had stayed at his place for almost 10 months and also spent 4 months in the house of Gumphabai and therefore, almost for 14 months, Savita has remained out of the house. Exactly when she was allegedly brought by accused no.1 from maternal uncle's place to Jamkhed to cohabit with him, has not come on record.

Likewise **PW5** Gumphabai also alleged that there was ill-treatment to Savita and husband beat on the instigation of mother-in-law. On what count there was beating and when, has not been clarified by her. Even she alleges demand of Rs.10,000/- by way of dowry. Though she alleges that accused husband beat and pushed her sister in the well, it is shown to be an omission. Material omission is also brought and got proved regarding accused no.1 suspecting illicit relationship between her sister and husband of Gumphabai apart from omission that accused no.1. pushed her sister.

17. Therefore, what is culled out from the testimony of PW1 brother, PW2 and PW5 two sisters and PW3 maternal uncle of deceased, is that there are vague allegations of ill-treatment on account of dowry demand. But admittedly there is no evidence about dowry fixed before marriage. Even learned trial Judge convicted accused for charge of 306 of the IPC instead of charge of Section 304-B of the IPC. Allegations are about keeping deceased starved, but as discussed above, it is clear that deceased had spent almost 14 months at maternal uncle and sister's place. The allegations of suspecting character and illicit relations are shown to be the material omissions. Therefore, there is no legally acceptable evidence on the point of cruelty in the backdrop of demand as contemplated under Section 498-A of the IPC.

18. Appellant no.1 is also convicted for offence under Section 306 of the IPC. Evidence of PW2 Parvatibai goes to show that accused no.2 went to this witness, asked this witness whether Savita had come on 07-09-2000. Therefore, since 07-09-2000, deceased Savita was missing. Prosecution's own witness PW6 Gajanan deposed that he and accused no.1 both searched for Savita, but she was not traced. PW1 Informant has also lodged missing report on 08-09-2000 and

dead body of Savita was found in the well of one Jadhav on 09-09-2000, whereas FIR is lodged on 09-09-2000. Therefore, since 07-09-2000 to 09-09-2000, there is no evidence as to what exactly happened and what triggered the alleged suicide. There is no evidence suggesting deceased leaving house of accused for some reason either on account of any mal-treatment or otherwise.

19. What Section 306 contemplates is evidence on the point of instigation, abetment or active participation on the part of accused persons in aiding deceased to commit suicide or creating such circumstances that she is left with no other alternative but to end her life. Such essential requirements are time and again reiterated by the Hon'ble Apex Court in numerous judgments.

20. Recently, the Hon'ble Apex Court in the case of ***Naresh Kumar v. State of Haryana***, (2024) 3 SCC 573 held that “*basic ingredients to constitute an offence under S. 306 are suicidal death and abetment thereof. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Thus, without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. Thus, in order to convict a person under S. 306 there has to be a clear mens rea to*

commit the offence and mere harassment, cannot be sufficient to hold an accused guilty of abetting the commission of suicide. Prosecution has to prove an active act or direct act which led the deceased to commit suicide. Ingredient of mens rea cannot be assumed to be ostensibly present but has to be visible and conspicuous.”

21. Keeping above legal requirements in mind, when there is no material suggesting any active participation by either of accused in instigating, abetment, it is unsafe and rather improper to hold them guilty for alleged death of Savita. Essential ingredients for attracting Section 306 of the IPC are patently missing and hence, even said charge fails.

CONCLUSION

22. On going through the impugned judgment, this Court has noticed that apart from losing sight on settled legal requirements and law and legal position, the above discrepancies and omissionS noticed by this Court, which are fatal to the prosecution, are not appreciated by learned trial Judge. Hence, such judgment cannot be allowed to be sustained. Accordingly, I proceed to pass following order :

ORDER

- I) Criminal Appeal No.90 of 2004 is allowed.
- II) The conviction awarded to appellant no.1 - Madan s/o Baburao Zodge in Sessions Case No.98 of 2001 by the learned Sessions Judge, Jalna on 27-01-2004 for the offence punishable under Sections 306 read with 34 and 498-A of the Indian Penal Code, stands quashed and set aside.
- III) The appellant no.1 stands acquitted of the offence punishable under Sections 306 read with 34 and 498-A of the Indian Penal Code.
- IV) **The bail bond of appellant no.1 stands cancelled.**
- V) The fine amount deposited, if any, be refunded to the appellant no.1 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