



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 99 OF 2004

Shamrao S/o. Balaji Tidake,
Aged : 37 years, Occu. : Agriculture,
R/o. Gondegaon, Tq. And Dist. Jalna.

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

Versus

State of Maharashtra

... Respondent

...
Mr. Joydeep Chatterji, Advocate for Appellant.
Mr. N. D. Batule, APP for Respondent - State.
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 3rd JULY, 2024

PRONOUNCED ON : 9th JULY, 2024

JUDGMENT :

1. In instant appeal, appellant takes an exception to the judgment and order dated 31.01.2004 passed by 1st Ad-hoc Additional Sessions Judge, Jalna in Sessions Case No.46 of 2001, convicting him for offence punishable under sections 498A and 306 of Indian Penal Code (IPC).

BRIEF BACKGROUND OF PROSECUTION CASE IN TRIAL

2. Police Station Taluka Jalna registered crime bearing no.146 of 2000 for offence punishable under sections 498A and 306 read with 34 of IPC on receipt of report at Exh.22 from brother

of deceased, who alleged that, his sister Parvatabai was married with appellant, who was already married. Everything was smooth for a period of two years. Husband was addicted to liquor and started ill treatment to deceased. Accused no.2, i.e. first wife of appellant instigated husband to assault his sister. Whenever she came, she reported above ill treatment. 15 days prior to the death, he had been to his sister. That time, accused husband assaulted him for coming to see her. After two days of his return, he got message that his sister was admitted in civil hospital. Then he learnt that, his sister had committed suicide by jumping into the well and therefore, he lodged above report (Exh.22), on the basis of which, police registered above crime.

Case being exclusively triable by the court of sessions, it came to be assigned to the court of 1st Ad-hoc Additional Sessions Judge, Jalna, who conducted trial vide Sessions Case No. 46 of 2001 and by its judgment and order dated 31.01.2004 recorded the conviction of husband alone for offence punishable under sections 498A and 306 of IPC and accused no.2 acquitted from all the charges.

Precisely, the said judgment and order of conviction which is now assailed before us by way of present appeal.

SUBMISSIONS

On behalf of Appellant : -

3. Sum and substance of the arguments of the learned counsel for appellant is that, prosecution came with a case that, deceased Parvatabai was married with accused, who was already married. It is alleged that, second marriage was performed with deceased Parvatabai because first wife did not bear child. However, he pointed out that, subsequently, first wife gave birth to daughter and even Parvatabai gave birth to son. With this factual background, learned counsel pointed out that there was no question of cruelty. That, witnesses are not clear and consistent on the point of cruelty and that mere allegations are levelled that husband get addicted to liquor and assaulted Parvatabai. That, specific instances are not given by informant except stating that 15 days back, when he went to see his sister Parvatabai, he was assaulted by stick. According to learned counsel, informant did not lodge any report to that extent. According to him, allegations are false, baseless and general in nature on the point of section 498A of IPC. He pointed out that, according to informant, his sister was treated well for two years, but his own mother PW3 contradicts him by stating that Parvatabai was treated properly for a period of five years. Therefore, learned counsel submits that, witnesses are not only inconsistent, but they are levelling omnibus allegations

without specifying ill treatment. He further pointed out that, there is no distinct or independent evidence of neighbour on the point of ill treatment and only family members are examined. That, section 306 of IPC is concerned, he pointed out that, evidence does not suggest inducement or abetment so as to attract said charge. He pointed out that, in fact occurrence was reported as 'AD'. He would strenuously submit that, there is no evidence to show that, husband alone subjected deceased to such cruelty that she was compelled to end up her life. That, death of Parvatabai had taken place on 14.07.2000, but there is no evidence to show what happened prior to alleged incident. He took this court through the Accidental Death (AD) reported by brother of accused and submitted that mere information is passed that Parvatabai left the house at 8:00 p.m. of 13.07.2000. That, with such material, no concrete opinion could be formed as to what prompted deceased to end up her life. Resultantly, according to him, there being nothing to show any inducement or abetment with *mens rea*, conviction of appellant husband alone, particularly when on same set of evidence accused no.2 is acquitted, is unjustified and hence he seeks indulgence by allowing the appeal.

4. Supporting the judgment, learned APP submitted that, there was cruelty meted out to Parvatabai by husband, who was

addicted to liquor. Brother informant is witness to the same and himself was assaulted by accused. He has narrated to that extent. Shortly thereafter deceased jumped into the well. That, there was no other reason for deceased to commit suicide. That, husband alone is responsible for the same. That, there is correct appreciation of evidence by learned trial court and as such he submits that no fault can be found in the manner of appreciation or conclusion drawn by learned trial court. Hence, he prays to dismiss the appeal for want of merits.

ORAL EVIDENCE ON BEHALF OF PROSECUTION

5. The role and status of prosecution witnesses are as under :-

PW1 Sk. Fakira is the pancha to inquest panchanama at Exh.18.

PW2 Vitthal is the informant. His testimony is at Exh.21.

PW3 Anusayabai is the mother of deceased.

PW4 Radhakishan is the Sarpanch of the village.

PW5 Vitthal Gavare is the Police Patil of the village.

PW6 A.P.I. Mohan Jadhav is the Investigating Officer.

PW7 Dr. Ambadas Sontake is the autopsy doctor, who conducted postmortem and issued report (Exh.29).

ANALYSIS

6. Though, here, case of prosecution rested in all seven witnesses, evidence of brother informant PW2 Vitthal and mother PW3 Anusayabai is only of significance and relevance.

On visiting brother's evidence, who is PW2 Vitthal at Exh.21, he is found to be deposing that accused had performed marriage with one Kamal, but as she could not bear the child, his sister was married to accused no.1. His sister went to reside with him. She treated well for two years. His sister gave birth to a son and at that time, even first wife i.e. accused no.2 delivered a girl child. He deposed that, accused no.2 started ill treating his sister Parvatabai. Husband, who was addicted to liquor assaulted his sister on instigation of accused no.2. His sister reported whenever she came. He claims that, 15 days prior to her death, accused no.1 assaulted him with a stick, at the time he went to meet his sister. Two days thereafter, his sister was reported to be admitted in the civil hospital. He claims that, he came to know that due to ill treatment and harassment of accused nos.1 and 2, his sister committed suicide by jumping into well.

While under cross, brother informant has answered that, when his sister died, her son was about 4 to 5 years old. He also answered that, his sister gave birth to a son after three years

of marriage. He denied all suggestions that there was no instigation by accused no.2 or assault by appellant and that his sister was hot tempered and his sister to be of obstinate nature.

7. Another witness, who is of relevance is PW3 Anusayabai, mother of deceased. According to her, her daughter Parvatabai married to accused five years prior to her death. Accused no.1 had no issue and therefore her daughter married to him. According to her, Parvatabai was treated well for five years and even she gave birth to a son, whereas, first wife accused no.2 also gave birth to a daughter. She deposed that, accused started ill treating and assaulting deceased after drinking liquor. Her son went to see deceased, that time, he was assaulted as well as there was assault to his sister. After 15 days, message was received that, her daughter committed suicide by jumping into the well and that she died due to ill treatment at the hands of accused.

In cross-examination, omission is brought that, 15 days prior to death, deceased had reported ill treatment to her and so she had sent her son to meet her.

8. PW4 Radhakishan and PW5 Vitthal are Sarpanch and Police Patil of the village. Even they stated that there was ill treatment to deceased by accused and they were assaulting. Husband used to drink and assaulted deceased.

Cross examination of PW4 Radhakishan shows that, there is omission on the point of on account of birth of son accused assaulting deceased; that accused no.1 was assaulting deceased after consuming liquor. Similarly, in cross examination faced by PW5 Vitthal, omissions are brought about deceased coming to her parent's house 15 days prior to her death, accused no.1 came and took her and her son with him. He also admitted that, he did not inform in his statement to police about second marriage.

9. Therefore, taking above testimonies of PW2 brother, PW3 mother, PW4 Sarpanch and PW5 Police Patil, it is noticed that, informant attributes allegations initially to husband and according to him, accused no.2 instigated. Mother PW3 does not speak about accused no.2 instigating accused no.1 and thereafter he assaulted. Informant brother stated that, he himself went to meet his sister 15 days prior to her death, but mother PW3 deposed that, 15 days prior to death, his sister came to their house. Therefore, mother and brother are not lending support to each other. General allegations are made about husband getting drunk and assaulting.

10. As stated above and as pointed out by learned counsel for appellant, informant himself claimed that, he was assaulted by

accused, he has not lodged report. Above omission brought in their cross are material omission. PW4 Sarpanch and PW5 Police Patil had not stated that there was direct interaction with deceased on the point of ill treatment, they are merely speaking about accused persons assaulted without defining and clarifying role played by accused nos.1 and 2. Therefore, with such quality of evidence, offence of 498A of IPC cannot be said to be proved.

11. As regards to the offence of 306 of IPC is concerned, though case of prosecution is that deceased died due to drowning, it is not substantiated that only because of cruelty at the hands of accused, deceased went and committed suicide by jumping. There is no iota of evidence on the point of abetment or inducement coupled with incitement. Therefore, as essential ingredients for attracting section 306 of IPC are also not available, conviction of husband alone for said offence, is unwarranted. On same set of evidence, trial court has already acquitted accused no.2.

12. There is nothing to show that, on the day of alleged suicide, there was cruelty at the hands of accused compelling deceased to end up her life. Resultantly, there is weak and fragile evidence regarding offence of 498A and 306 of IPC. Cruelty and abetment as contemplated under law has not been established.

13. Perused the judgment. Apparently there is improper appreciation of evidence. No satisfactory and sound reasons are assigned for accepting the case of prosecution. The above discussion and features noticed by this court on re-appreciation are not taken into account by learned trial Judge and hence interference is called for. Hence, I proceed to pass the following order :-

ORDER

- I) Criminal Appeal stands allowed.
- II) The conviction awarded to appellant - Shamrao S/o. Balaji Tidake in Sessions Case No.46 of 2001 by 1st Ad-hoc Additional Sessions Judge, Jalna on 31.01.2004 for the offence punishable under Sections 498A and 306 of Indian Penal Code, stands quashed and set aside.
- III) The appellant stands acquitted of the punishable under sections 498A and 306 of Indian Penal Code (IPC).
- 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.

(ABHAY S. WAGHWASE, J.)