



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 124 OF 2004

Ankush S/o. Kashinath Shrikhande,
Age : 33 years, Occu. : Agri.,
R/o. Kaygaon, Tq. Sillod,
Dist. Aurangabad

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

Versus

The State of Maharashtra

... Respondent.

....
Mr. Abhaysinh K. Bhosale, Advocate for Appellant.
Mr. K. K. Naik, APP for Respondent - State.
....

CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 30 SEPTEMBER 2024
PRONOUNCED ON : 04 OCTOBER 2024

JUDGMENT :-

1. Convict Ankush is hereby taking exception to the judgment and order passed by IIIrd Additional Sessions Judge, Aurangabad dated 21.02.2004 in Sessions Case No.265 of 2001 recording guilt for offence punishable under section 498-A and 306 of Indian Penal Code (For short, "IPC").

STORY OF PROSECUTION IN TRIAL COURT IS AS UNDER

2. Deceased Anita was married to appellant on 04.05.1998. For a period of one year, everything was smooth, however, thereafter husband and in-laws subjected deceased to

ill treatment on account of demand of Rs.30,000/- for purchasing a tractor. Deceased reported about ill treatment to her parents and her sister. On 10.04.2000, understanding was given to accused. On 20.04.2000, news of Anita committed suicide was received. After funeral, father PW1 Bhimrao approached Wadod Bazar Police Station and lodged report, on the basis of which crime was registered.

After investigation and gathering sufficient evidence, husband and in-laws were charge-sheeted and ultimately tried by learned IIIrd Additional Sessions Judge, Aurangabad vide Sessions Case No. 265 of 2001.

The above sessions case came to be decided on 21.02.2004, convicting appellant husband and acquitting in-laws i.e. vide judgment and order dated 21.02.2004.

Feeling aggrieved by the above, husband has taken exception to by filing instant appeal.

SUBMISSIONS

On behalf of Appellant :

3. According to learned counsel, prosecution has failed to prove the charges beyond reasonable doubt. He submitted that, there is no independent piece of evidence. That, only

family members are examined. According to him, they are making general and vague allegations against all accused without specifying role. He pointed out that, on same set of evidence, accused nos.2 to 4 are acquitted, but only husband alone is held guilty. Thus, according to him, there is improper appreciation. That, necessary ingredients for attracting the charges were not available, still conviction is recorded and hence the same being erroneous and illegal, he seeks intervention at the hands of this court.

On behalf of Respondent – State : -

4. While opposing the above appeal, learned APP submitted that, barely after one year of marriage, there was demand. As the same was not met, husband and in-laws ill treated her. He pointed out that there was beating as well as not providing food and according to him, it amounts to ill treatment and cruelty. He pointed out that, Anita consumed insecticide. Her small child also died due to consumption. That, suicide was only because ill treatment and cruelty. That, husband beat her and therefore, according to learned APP, learned trial court committed no error whatsoever in accepting prosecution version and he prays to dismiss the appeal.

EVIDENCE ON RECORD

5. Role and status of prosecution witnesses is as under :

PW1 Bhimrao is informant father of deceased.

PW2 Anusayabai is mother of deceased.

PW3 Sunita is elder sister of deceased.

PW4 Vinayak is the pancha to spot panchanama.

PW5 Sukhdeo, pancha to seizure panchanama did not support prosecution.

PW6 Shivaji another pancha did not support prosecution.

PW7 Chandrabhan, independent witness, who gave information to police.

PW8 A.P.I. Band is the Investigating Officer.

PW9 Dr. Korale, the Medical Officer, who conducted autopsy.

SUM AND SUBSTANCE OF PROSECUTION EVIDENCE

6. PW1 Bhimrao informant father at Exh.20 deposed as under :-

“Deceased Anita was my daughter. Her marriage had taken place on 04.05.1998 with accused no.1. After the marriage, Anita had been to the house of accused no.1 for cohabitation at village Kaigaon, Tq. Sillod. Accused no.1 was residing in a joint family alongwith accused nos.2 to 4. For a period of one year accused persons

have treated my daughter as usual at their house. After the period of one year accused nos.1 to 4 made a demand of Rs.30,000/- to my daughter Anita for purchasing a tractor. Thereafter my daughter deceased Anita had delivered a male child named Akash. At the time of incident Akash was aged six months. Whenever my daughter used to come at my house at the time of festival she used to disclose us the said fact of demand of Rs.30,000/-. My daughter told me that on the account of demand of Rs.30,000/- accused nos. 1 to 4 were abusing, Accused nos.1 to 4 used to beat my daughter Anita and they were also not provided food to her in time. Thereafter my daughter had been to my house for Holi festival, at that time, she disclosed me the said incident. When my daughter told me the fact of demand of Rs.30,000/- at that time I convinced my daughter and told her that I will give understanding to her her husband. Thereafter I have understanding to the accused no.1 about my inability to pay money and not to ill treat my daughter thereafter.

At the time of Holi festival my daughter stayed at my house till Gudipadva. Her husband had been to fetch her on 10.04.2000. I gave understanding to her husband and sent my daughter with him. On 20.04.2000 at about 7:30 a.m. when I was at Aurangabad Madhav Shrikhande R/o. Kaigaon came to my house and informed me about the death of my daughter by drowning into the well.

After Post-mortem the funeral had taken place at Kaigaon. After funeral, I went to my house at Dhanora. My family members were also present at the time of funeral. When dead bodies were taken to Kaigaon for funeral at that time I had given a complaint to police station Wadod-Bazar.”

While under cross, he denied that there was no ill treatment. He admitted that funeral was over by 7:00 p.m. on

20.04.2000. He answered that, when he reached to the spot, he saw the policemen available there and further admitted that police made inquiries with him.

7. PW2 Anusayabai mother at Exh.22 deposed as under :-

“Anita was treated well for about one year. Anita used to come at my house at the time of festival. She was telling us about the ill-treatment to her from the accused on the account of demand of Rs.30,000/- for purchasing tractor. We told to Anita that we could not pay Rs.30,000/- due to indeptness, we will convince to the accused persons. Thereafter, at the time of Holi festival in the year 2000 my husband Bhimrao had been to fetch deceased Anita. Deceased Anita came to my house for Holi festival. Anita was at my house till Gudipadva. She had disclosed me the ill-treatment about beating to her and abusing by accused nos.1 to 4 for Rs.30,000/-.

At the time of Gudipadva festival accused no.1 came to my house. We have given understanding to accused no.1 not to ill-treat my daughter thereafter and we could not pay the money. Anita was sent with accused no.1 for cohabitation. After 10 days we received a message from some persons of village Kaigaon about the death of my daughter Anita due to drowning in to the well.”

While under cross PW2 Anusayabai admitted that, Anita disclosed ill-treatment to her from accused when she was fetched for Holi festival. That, said fact was not disclosed by her to anyone till her death. She too admitted that, police were

present at Kaigaon before they reached the spot and thereafter police made inquiry with them. She answered that, after one day of the funeral, she reported police about ill treatment. Omission is brought to the extent that, at the time of Gudhi Padwa festival, they gave understanding to accused no.1 not to give ill treatment to deceased.

8. PW3 Sunita sister at Exh.23 deposed as under :-

"The marriage of Anita had taken place on 04.05.1998 with accused no.1. Anita went to village Kaigaon with accused no.1 for cohabitation. She was treated well for one year by accused no.1 at Kaigaon. Accused no.1 to 4 were residing in joint family. During the wedlock Anita had given birth to Akash. At the time of death of Anita, Akash was aged 8 months, and he is also died, in incident. Whenever Anita had been to the house of my parents, she was disclosing the ill treatment to her by accused by beating on the count that accused no.1 to 4 were making demand of Rs.30,000/- to her for purchasing tractor. My father was convincing deceased. Before Gudi padva festival my father had been to fetch Anita. Anita stayed at my house for about 8 days. Thereafter after Gudi Padva festival accused no.1 had come to take her. My father gave understanding to accused no.1 not to ill-treat Anita. Then she was sent to Kaigaon with accused no.1. At that time, my sister Anita was weeping. On 20.04.2000, we received a message about death of Anita by drowning into the well."

While under cross omission is brought that at the time of Gudhi Padwa festival, accused no.1 was given

understanding that not to ill-treat deceased Anita. At that time, deceased Anita was weeping. Rest is all denial.

Above is the evidence of parents and sister.

ANALYSIS

9. On careful scrutiny of above substantive evidence and answers given in cross examination, it is noticed that, there are allegations of demand of Rs.30,000/- for purchase of tractor. Apparently, all above family members are attributing demand as well as ill treatment to all four accused. As pointed out, there are only allegations of beating. When such instances took place since marriage, is not getting clear. Even their evidence shows that, disclosure was only once that too during visit for Holi festival. Second allegation by informant father is that, accused did not provide her food "in-time". Therefore, it does not amount to keeping her starved or not giving food at all. Mother and sister are silent about this. Consequently, evidence on the point of section 498-A IPC is apparently general and weak. As stated above, only one incident reported during entire cohabitation.

10. It seems that, unfortunately deceased died due to drowning in well. Parallel case is that, insecticide was detected in viscera of both deceased Anita as well as her child. What

father and mother speak is that she had come for Holi festival and her husband has come to fetch her on 10.04.2000 and after 10 days Anita seems to have met death. What happened immediately in proximity to 20.04.2000 has not come on record. PW? Chandrabhan, independent witness, who gave information (*khobar*) to police, deposed that, on the intervening night of 19.04.2000 and 20.04.2000 around midnight, present appellant visited him and informed that Anita was missing. Therefore, search was undertaken of both, mother and son. Dead bodies were found on 20.04.2000. This witness has given *khobar*. Again he has reported that, on 19.04.2000, Anita had been to the field in the afternoon. She had taken meals and left the house around 2:30 to 2:45 p.m., but she did not return home. What exactly happened since afternoon of 19.04.2000 till dead bodies were noticed after fetch out of well water, is not getting clear.

11. Defence case is that, insecticide is used as they being agriculturist. Therefore, inference about whether it was accidental consumption or otherwise, can not be drawn unless there is material suggesting any occurrence pertaining to maltreatment taking place previously up to she going missing.

12. Learned APP submitted that, death has taken place within a year of marriage and therefore, according to him, section 113A of Indian Evidence Act comes into play. It is true that, section 113A of Evidence Act can be used to draw presumption, but the view of settled law is that, initially prosecution has to discharge its primary burden establishing the foundational facts. Only then as an accessory section 113A of Evidence Act can be invoked. There are catena of judgments on the point of section 113A Evidence Act, presumption as to abetment of suicide by a married woman in the cases like ***State of H.P. v. Nikku Ram and Ors.***, (1995) 6 SCC 219; ***Lakhjit Singh and Anr. v. State of Punjab***, 1994 Supp (1) SCC 173; ***State of Punjab v. Iqbal Singh and Ors***, (1991) 3 SCC 1.

Here, above discussion shows that there is weak evidence on the point of mal-treatment or it to be of such nature or to be so consistent and incessant that deceased was left with no other alternative, but to end up her life. As stated above only solitary incident of beating and demand is said to be informed at the time Holi festival.

13. Perused the judgment under challenge. As pointed out, learned trial Judge on same set of evidence has acquitted

accused nos. 2 to 4 and only husband alone is held guilty by applying presumption under section 113A of Evidence Act. Therefore, apparently erroneous approach has been adopted and hence it is a fit case to interfere. Accordingly, I proceed to pass the following order : -

ORDER

- I) The criminal appeal is allowed.
- II) The conviction awarded to appellant - Ankush S/o. Kashinath Shrikhande in Sessions Case No.265 of 2001 by IIIrd Additional Sessions Judge, Aurangabad on 21.02.2004 for the offence punishable under sections 498-A and 306 of Indian Penal Code, stands quashed and set aside.
- III) The appellant stands acquitted of the offence punishable under sections 498-A and 306 of Indian Penal Code.
- IV) The bail bonds of the appellant stands cancelled.
- V) The fine amount deposited, if any, be refunded to the 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, J.]