



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 126 OF 2004

1. Vinod Shriram Dutte,
aged 30 years, Occ. Agri.,
2. Bablu @ Ravindra Shriram Dutte,
aged 32 yrs, Occ. Agri.,
3. Tulsabai Shriram Dutte,
aged 50 years, Occ. Household,

All R/o New Ghodasgaon,
Taluka Muktainagar,
District Jalgaon.

... Appellants
[Orig. accused nos. 1, 2 and 4]

Versus

State of Maharashtra

... Respondent

.....
Mr. Joydeep Chatterji, Advocate for the Appellants.
Mrs. Chaitali Chaudhari Kutti, APP for Respondent-State.
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 04.09.2024
Pronounced on : 20.09.2024

JUDGMENT :

1. Judgment passed by IInd Adhoc Additional Sessions Judge, Jalgaon in Sessions Case No. 132 of 2002 rendering conviction for offence under Sections 498-A r/w 34 and 306 r/w 34 of IPC is the subject matter of challenge in this appeal.

BRIEF FACTS OF PROSECUTION VERSION IN TRIAL COURT

2. Deceased Yogita was married to appellant no.1 in June 1999. For six months after marriage, she was treated properly. During her second visit after six months of marriage, she reported informant father that accused persons had put up a demand of Rs.75,000/- for laying pipeline in the agricultural field. In the background of such demand, she was beaten, harassed and kept starved. According to prosecution, for not meeting demand, she was threatened not to be allowed to cohabit. Once, she was also given electric shock but she managed to survive. Ill-treatment continued to such extent that finally getting fed up of the same, she consumed insecticide and succumbed to the same on 31.01.2002.

3. Informant father set law into motion. Crime was investigated by PW4 PSI Gawale and on gathering sufficient evidence, accused persons were chargesheeted.

4. At trial, prosecution adduced evidence of in all six witnesses and relied on documentary evidence like FIR, spot panchanama, inquest panchanama, A.D. papers, postmortem report, CA report etc.

5. Defence also relied on testimony of DW1 Ashok Patil, Secretary of a multipurpose cooperative society.

6. After appreciating above evidence, learned trial Judge accepted the case of prosecution as proved against accused nos. 1, 2 and 4 and rest of the accused stood acquitted from all charges.

7. Feeling aggrieved by the above judgment and order of conviction, by invoking Section 374 of the Code of Criminal Procedure [Cr.P.C.], the instant appeal has been filed.

SUBMISSIONS

On behalf of the appellants :

8. Learned counsel for the appellants submitted that there is no convincing or legally acceptable evidence on behalf of the prosecution and moreover, according to him, case of prosecution has not been proved beyond reasonable doubt. As regards the allegation of offence under Section 498-A of IPC is concerned, he submitted that there are apparently vague, general and omnibus allegations. Specific roles are not defined. He pointed out that allegation is of demand of Rs.75,000/- for laying agricultural pipeline, but at the time of FIR, or even at the time of marriage, accused had already laid agricultural

pipeline by raising loan from a co-operative society and witness to that extent has been examined by defence and therefore, it is his submission that, allegation of demand of Rs.75,000/- is apparently false and afterthought and out of annoyance of losing Yogita, who met with accidental death.

9. Learned counsel for the appellants took this Court through the testimony of informant and his wife and would point out that they are not consistent with each other on material counts. Even their testimonies are full of material omissions and therefore, according to him, it is unsafe to seek reliance on such testimonies.

10. As regards the allegation of abetment to suicide is concerned, learned counsel would submit that there is evidence suggesting spraying of insecticide being in progress in the field. Therefore, there is every possibility of accidental inhalation as victim had complained of nausea in the evening and was taken to the hospital by husband and in-laws. He pointed out that alleged incident is of night of 31.01.2002. There are no allegations or material suggesting abetment, inducement or any active role played by any of the appellants in abetting suicide. He further pointed out that autopsy doctor has issued opinion even prior to receipt of CA report. He

pointed out that there are several unanswered questions from prosecution side and their evidence is not full-proof or cogent in support of allegation of suicide. Consequently, he criticizes the manner of appreciation of evidence as well as finding recorded by learned trial Judge and prays for indulgence by setting aside the judgment by allowing the appeal.

On behalf of the Respondent State :

11. In support of the judgment, learned APP would submit that case has been proved beyond reasonable doubt. That, barely after few months of marriage, accused persons put up demand of money for laying pipeline in the agricultural field. In spite of being informed about inability to meet the demand, the demand continued and for its fulfillment, deceased was subjected to maltreatment. She promptly reported about it on all occasions when she went to her parents' home. That, once attempt was made to give her electric shock. That, even when she was suffering from swelling to the thigh, no medical treatment was provided to her. Their such conduct and behaviour was only to pressurize her as well as parents to meet their demand. Thus, according to learned APP, there is ample evidence about commission of offence under Section 498A of IPC.

12. As regards abetment to commit suicide is concerned, she submitted that false defence has been set up. Deceased had consumed insecticide. CA report confirms detection of organo-phosphorous insecticide on the articles as well as viscera. Consumption had taken place in the house. Insecticide container was found in the house and therefore she questions that, what more is required to hold appellants responsible for the consumption. According to learned APP, there was no other reason for her to end up her life. They are solely responsible and are therefore rightly held guilty. Consequently, she prays to dismiss the appeal.

13. Learned APP seeks reliance on the judgments of the Hon'ble Apex Court in *Paranagouda and another v. The State of Karnataka and another* [Special Leave Petition (Crl.) No. 12216 of 2022 decided on 19.10.2023], *Kamalakar v. State of Karnataka* [Criminal Appeal No. 1485 of 2011 decided on 12.10.2023] and *Siddaling v. The State, through Kalagi Police Station* AIR OnLine 2018 SC 231.

EVIDENCE ON RECORD

14. Sum and substance of the six witnesses examined by the prosecution in support of its case, and their role and status is as under:

- PW1** Baburao is father of deceased. He stated that after six months, there was demand of Rs.75,000/- by accused persons for laying pipeline and in such backdrop, there was cruelty in the form of beating, harassment and starvation. His daughter consumed poison and succumbed to the same and hence the complaint.
- PW2** Anusayabai, mother of deceased, also stated that after six months, accused insisted her daughter to bring Rs.75,000/- for laying pipeline. On non-fulfillment, husband and mother-in-law did not provide food and they beat her. On 31.01.2000, news that she consumed poison was received and she succumbed to the same.
- PW3** Bhaskarrao acted as pancha to spot panchanama Exhibit 28 and seizure of clothes.
- PW4** PSI Gawale is the Investigating Officer.
- PW5** Sk. Ibrahim acted as pancha to seizure of article. He did not support prosecution.
- PW6** Dr. Girish Patil is the autopsy surgeon, who opined death due to consumption of monocrotophos poison.

Accused has also examined defence witness, i.e. DW1 Ashok Patil, Secretary of Ghodasgaon Multipurpose Co-operative Society Ltd., who deposed about accused no. 3 borrowing loan for laying pipeline on 18.03.2000.

ANALYSIS

15. Here, appellants were chargesheeted for commission of offence under Sections 498-A, 306 r/w 34 of IPC. Out of original five accused, accused nos.3 and 5 i.e. Shriram and Narendra were acquitted. However, husband Vinod, brother-in-law Ravindra and mother-in-law Tulsabai were held guilty for offence under Sections 498-A and 306 of IPC.

16. Sum and substance of prosecution case is that all accused persons demanded Rs.75,000/- for laying pipeline in their agricultural field. For fulfillment of said demand, there was maltreatment to deceased. That, only because of cruelty and harassment at their hands, she consumed poison and succumbed to the same.

17. Though case of prosecution is rested on testimony of six witnesses, crucial evidence is of parents PW1 and PW2, as rest of the witnesses are panchas, police official and autopsy surgeon. Therefore, evidence of parents of deceased is required to be carefully analyzed to ascertain whether prosecution has proved the charges beyond reasonable doubt. Relevant evidence of PW1 and PW2 is required to be reproduced in verbatim.

18. PW1 Baburao initially deposed that after marriage of his daughter with appellant Vinod on 18.06.1999, she went to reside with her in-laws. First visit was paid by her after two months and at that time, she reported that her matrimonial life was smooth. Her second visit was after six months. But that time, witness deposed that, she disclosed that **all accused** were demanding Rs.75,000/- for laying pipeline in their field. He could not give said amount because of his financial position and so his daughter returned back to her matrimonial home immediately. She was brought again after six to seven months and that time she disclosed that she was being “beaten”, “harassed” and “not provided with food” and being “pestered” for Rs.75,000/-. His daughter attributed ill-treatment to mother-in-law Tulsabai, brother-in-law Ravindra and husband Vinod. During visit of his sister-in-law Marabai to the matrimonial home of his daughter, she informed her that she was being beaten, ill-treated by husband, mother-in-law and elder brother-in-law and she was not given proper food. During her stay for Diwali festival for seven to eight days, she repeated about same ill-treatment at the hands of accused for non-payment of Rs.75,000/-. When husband came to take her back, he talked in insulting manner and abused this witness and warned for not giving Rs.75,000/- by saying that Yogita will not live and he would not allow her to live. Later on he learnt that she

conceived, but her in laws decided to terminate her pregnancy. Three to four days thereafter, he got news that Yogita suffered electric shock while drying clothes and fell. Witness claims that he went and questioned accused about electric shock and at that time accused Vinod said that this time she survived, but will not in future. Yogita was brought for delivery, she delivered girl child but none of the accused came to see the newborn. During *Ekadashi*, when he and his wife paid visit to their daughter at matrimonial home, they noticed swelling to her thigh and mother-in-law complained that she was pretending to avoid domestic work and therefore she was brought home at Nimbhora and treated. According to him, treating doctor informed that puss had developed due to poisonous injection. Husband came to take her but refused to take tea and meals. On 31.01.2002, phone call was received that Yogita consumed poison and brought to hospital at Muktainagar. When they went there, they saw her dead body. He approached police and lodged report Exhibit 25. Grand daughter Jayashree also expired.

19. There is extensive cross running into several pages and therefore only relevant cross is reproduced herein.

In para 10 he admitted that, one Shriram Taral had acted as middleman in settlement of marriage of Yogita. He denied that

accused spent expenses of marriage. In para 11, he admitted that he was working as Police Patil but was suspended. In para 12, he admitted that in two and half years matrimonial life, his daughter did not send any letter to him. He is unable to state in whose name 15 acres of agricultural land of accused was shown in the revenue recorded. He admitted that some land was already having irrigation facility. He admitted that at the time of incident, accused were reaping cash crops like banana, cotton and sugarcane. He denied that his daughter and her mother-in-law laboured in the field. He denied that in January, insecticides are being sprayed on crops. In para 13, he denied that for the first time in April 2000 there was demand of Rs.75,000/- to Yogita. He later on volunteered that demand started after 6 months of her marriage. In further cross he admitted that all three accused met Yogita and gave new clothes and one gold ring about $\frac{1}{2}$ gram to the newborn. In para 14, he expressed his ignorance as to whether in February 2002 accused persons laid pipeline in their field at their own expenses by obtaining loan from a multipurpose cooperative society at Muktainagar. In para 15, he admitted that after taking treatment for swollen thigh and staying for one to one and half month, when she went back to her matrimonial house, till her death, he had no contact with her. In para 16, he admitted that Yogita was brought to the hospital at Muktainagar by the accused persons.

Para 17 is full of omissions as he answered regarding stating that six months after marriage, during her visit Yogita disclosed about accused pestering her to bring Rs. 75,000/- and they were abusing her, beating her and not providing sufficient food; about Marabai visiting matrimonial house of Yogita and such lady disclosed to him about ill-treatment to Yogita; that, he visited her matrimonial house, and told her husband and father in law that he does not have Rs.75,000/-; that at the time of Diwali, when accused no.1 came to take her, he insulted and humiliated him and that he warned that if amount of Rs.75,000/- is not paid, he will not allow her to live. When his complaint was confronted, he admitted that it is not appearing therein and is also unable to assign any reason why police omitted such facts from his complaint.

An omission is also brought about he stating to police that Yogita also informed that, when it was noticed that foetus of Yogita was of female, accused decided to terminate pregnancy.

Again omissions are brought about receiving phone call from accused Ravindra informing electric shock suffered by Yogita; that, when after delivery accused were invited to see the newborn and they replied that they were not interested; that, he saw Yogita lying in her matrimonial house with swollen thigh and about her mother-in-law

saying that she was avoiding her duties on one or other reason and therefore he lifted her and brought her to his house and gave treatment and treating doctor informed that the puss was due to poisonous injection. He is unable to state why above version is not finding place in his complaint.

20. On visiting testimony of PW2 mother Anusayabai, she too deposed that after 6 months, Yogita disclosed that her matrimonial relations insisted to bring Rs.75,000/- for laying pipeline. As the demand was not fulfilled, husband and mother-in-law were not providing food regularly and they beat her. When Yogita came for first Diwali, she disclosed the above harassment. When accused husband came to take her, he put up demand of Rs.75,000/- or to keep Yogita in their house. She too narrated about her daughter making disclosure of ill-treatment to Marabai, she suffering electric shock, during their visit to her, they coming across swollen thigh and she being brought and treated. On 31.01.2002, they received call that Yogita consumed poison.

While under cross, she is unable to state total agricultural holding of accused. According to her, accused no.1 Vinod was looking after the land. She also admitted that, it did happen that they first

time came to know about demand of amount to Yogita in April 2000. She admitted that before delivery, when there were pains, information was passed to accused on phone and at that time accused Vinod and Tulsabai had come and thereafter, they both went back. She answered that after death of Yogita, police never interrogated her and that she never stated to police that after 6 months of marriage Yogita told that she was ill-treated and pestered for Rs.75,000/-. Rest is all denial.

21. On carefully sifting the testimony of parents, it is emerging that allegation of demand of Rs.75,000/- is raised by informant father against all accused, i.e. after six months of marriage, and there was alleged to be beating, harassment and not providing food. Such allegations are attributed to husband, mother-in-law and brother-in-law by informant. But PW2 mother attributed allegations of alleged maltreatment only to husband and mother-in-law, and not brother-in-law. Who amongst the two beat her, or both beat her, and what was the form of harassment, is not clarified by both these witnesses. When exactly and who did not provide food is not made clear. Primary accusations by both are that Rs.75,000/- were demanded for laying pipeline i.e. after six months of marriage. Marriage is of 18.06.1999. Therefore, demand raised could be on December 1999.

22. In para 17 of the cross of informant, there are material omissions about Yogita, after six months of marriage, disclosing that accused were pestering her for Rs.75,000/-, abusing her, beating her and not providing food. There is also omission about accused no.1 husband, during his visit at the time of Diwali, warning that if there is failure to pay Rs.75,000/- he would not allow Yogita to live.

Likewise, even PW2 mother, in cross para 3 stated that after death of Yogita, police never interrogated her and she never stated before police that six months after marriage, Yogita disclosed that she was ill-treated and pestered for Rs.75,000/-. Therefore, from above material, it is explicit that, apart from material omission, there is clear attempt to improvise the version by both parents.

23. Here, specific defence is that loan was obtained for laying pipeline and even witness to that extent has been examined in the form of DW1. On visiting evidence of DW1, he has deposed in Exhibit 44 about accused no.3 borrowing loan on 18.03.2000 from their society to the tune of Rs.1,20,000/- i.e. for laying pipeline in the field. This witness has also placed on record loan sanction letter at Exhibit 45.

Consequently, testimony of DW1 goes to show that loan was applied for laying pipeline and it was also raised and got sanctioned through multipurpose society. Taking such evidence into consideration, accusation that there was maltreatment on account of demand of Rs.75,000/-, coupled with it to be material omission proved through I.O., their versions come under shadow of doubt.

24. Therefore, to summarize as regards to offence under Section 498-A of IPC is concerned, there are allegations of abuses without elaborating nature of abuses ; secondly, beating, and its instances are not quoted nor specific role is attributed ; and thirdly, not providing food. During entire cohabitation of two years, when above treatment is meted out has not been stated by either PW1 or PW2. In view of evidence of DW1, allegation of demand of Rs,75,000/- for laying pipeline comes under shadow of doubt. Answers given by informant in para 15 show that there was no contact between deceased and parents for a considerable gap. Therefore, there is no material to show that there was continuous or incessant harassment or cruelty in the backdrop of alleged demand. Hence, in the considered opinion of this Court, there is weak or fragile evidence as regards to Section 498-A of IPC is concerned.

25. Second accusation of prosecution is that because of the ill-treatment, Yogita consumed insecticide on 31.01.2002. Case of defence is that there is possibility of accidental consumption.

26. In order to attract offence of 306 IPC, it is incumbent upon prosecution to establish abetment, inducement or instigation to commit suicide. Apart from *mens rea*, it is further required to be shown that there is positive or active role played by accused in abetment of such suicide. Deceased and accused resided at New Ghodasgaon, Taluka Muktainagar, District Jalgaon.

27. On close scrutiny of informant's evidence, it is emerging that deceased had come for delivery in 7th month and after two months of delivery, she returned back to her matrimonial house. Exactly in which month she went, has not come on record. Visit of parents was said to be during *Ekadashi* festival which fell in July. After being brought home, on noticing swelling to the thigh, deceased stayed for two months. If this is so, then her stay at parents' place should be up to September/October. During her such cohabitation there does not seem to be specific allegation of any sort. News of consumption seem to have been received by PW1 and PW2 on 31.01.2002. Going by such dates and period, again, there is no instance or incidence in the

backdrop of demand, or any abetment, inducement or instigation at the hands of appellants, i.e. more particularly in proximity to 31.01.2002. There is nothing suggesting or attributable to the appellants to show that they are responsible for alleged consumption.

28. Perused the judgment impugned herein. In the considered opinion of this Court, there is improper appreciation of both, evidence as well as law. It is noticed that, judgment, more particularly para 17 and 18 is full of conjectures and surmises. Omissions which have cropped up in the very informant's evidence in para 17, which are material in nature, are apparently lost sight of and even answers by PW2 mother in cross are not properly appreciated. In spite of holding informant to be a Police Patil, he is branded as a rustic villager and the vital omissions are overlooked. Trial court was expected to ascertain whether necessary ingredients for attracting Section 498-A as well as 306 of IPC are available in the evidence of PW1 and PW2. Merely because death had taken place within seven years, learned trial Judge seems to have drawn presumption under Section 113-A of the Evidence Act and applied it, i.e. without first getting convinced and satisfied that initial burden and primary case of prosecution is at all proved or not. Consequently, there is erroneous approach and as

such, impugned judgment cannot be allowed to be sustained. Hence, I proceed to pass the following order :

ORDER

- I. The appeal is allowed.
- II. The conviction awarded to the appellants, i.e. appellant no.1 Vinod Shriram Dutte, appellant no.2. Bablu @ Ravindra Shriram Dutte and appellant no.3. Tulsabai Shriram Dutte, by learned IInd Ad-hoc Additional Sessions Judge, Jalgaon in Sessions Case No. 132 of 2002 for offence under Sections 498-A and 306 r/w 34 of IPC on 21.02.2004 is hereby quashed and set aside.
- III. The appellants stand acquitted of the offence punishable under Sections 498-A and 306 r/w 34 of IPC
- IV. The bail bonds of the appellants stand cancelled.
- V. 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 regarding disposal of *muddemal*.

[ABHAY S. WAGHWASE, J.]