



IN THE JUDICATURE OF HIGH COURT AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 146 OF 2004

Bashir Khan S/o Shabbir Khan Pathan,
Age : 25 years, Occu. : Labour.,
R/o. Danapur, at present Purbawada,
Tq. Phulambri, Dist. Aurangabad.

... Appellant

Versus

The State of Maharashtra,
Through Police Station,
Wadod Bazar, Tq. Sillod,
Dist. Aurangabad.

... Respondent

....
Mr. Mujataba Ghulam Mustafa, Advocate for Appellant
APP for Respondent - State : Mrs. Chaitali Chaudhari - Kutti
....

CORAM : ABHAY S. WAGHWASE, J.

DATED : 18th SEPTEMBER, 2024

ORAL JUDGMENT :-

1. In this appeal, there is challenge to the judgment and order of conviction dated 26.02.2004 passed by IIIrd Additional Sessions Judge, Aurangabad in Sessions Case No.100 of 2001 rendering judgment and order of conviction of present appellant husband for commission of offence under sections 498-A and 306 of Indian Penal Code (IPC).

FACTUAL MATRIX

2. In nutshell prosecution version in trial court is that, deceased Nazirabi was married to appellant on 20.03.1997 and she went

to reside with her husband and in-laws. According to prosecution, for initial period of six months, Nazirabi was treated well. Thereafter, accused husband and in-laws started ill treatment comprising of not providing food, getting excess work done, beating and hurling abuses. Whenever she came home, she reported it to her parents. Informant father twice - thrice gave understanding to accused to treat his daughter properly. However, they continued ill treatment. Because of ill treatment, she consumed poison and succumbed on 19.08.2000. After last rituals like buried, PW1 Sk. Shamim approached Wadod Bazar Police Station and lodged report at Exh.32, on the basis of which, crime was registered and investigated by PW4 A.P.I. Mishrilal, who after gathering sufficient evidence, charge-sheeted accused.

All six accused faced trial before learned Additional Sessions Judge, Aurangabad vide Sessions Case No. 100 of 2001 for offence punishable under sections 498-A and 306 r/w section 34 of IPC.

On appreciation of oral and documentary evidence by judgment and order dated 26.02.2004, accused no.2 to 6 stood acquitted, however, husband alone came to be convicted as case of prosecution to his extent was accepted by learned Trial Judge.

3. Feeling aggrieved by the above judgment and order of conviction, instant appeal has been filed.

ROLE AND STATUS OF PROSECUTION WITNESSES

4. The prosecution has examined following witnesses in support of its case. Their role and status is as under :

PW1 Sk. Shamim father, who set law into motion;

PW2 Bismillabi is the mother of deceased Nazirabi;

PW3 Sk. Sandu is the brother of PW1 and uncle of deceased;

PW4 A.P.I. Mishrilal Band is the Investigating Officer.

SUBMISSIONS

On behalf of Appellant :-

5. Pleading innocence and alleging false implication, learned counsel for appellant pointed out that, prosecution has utterly failed to establish the case and charges beyond reasonable doubt. He emphasized that, on same set of evidence and allegations, which are apparently general and omnibus in nature, all in-laws i.e. accused nos.2 to 6 are acquitted. However, he expressed surprise by submitting that, husband alone has been singled out and held guilty. He took this court through the evidence of parents i.e. PW1 Sk. Shamim and PW2 Bismillabi and would submit that, though there are allegations of proper treatment for six month and subsequent to it, there was maltreatment. He took this court through the evidence of PW1 Sk. Shamim informant father and

would submit that, in examination-in-chief itself informant has stated that, after birth of male child, there was ill-treatment. Therefore, according to him, when the birth of son has taken place after almost a year after marriage, how could there being maltreatment after six months which are alleged by parents. He pointed out that, general allegations are levelled regarding not providing food, getting excess work done and all accused subjecting her to physical and mental cruelty. That, informant has not stated when the incidences took place and who amongst the accused did what and who abused and in what manner. He pointed out that, even last visit and contact between informant and deceased was more than four to five months prior to alleged consumption. Therefore, according to learned counsel, there is nothing to connect appellant husband for charge of subjecting her to continuous ill treatment, which could be the cause of alleged consumption.

6. He also invited attention of the court to the paragraph no. 4 of cross of informant and would submit that informant is unable to state the date, month and year, when his daughter disclosed about ill treatment and by which of the accused. He also took this court through the evidence of mother PW2 Bismillabi and would submit that as like husband PW1 Sk. Shamim, mother has also levelled false and general allegations as she has also stated that there was demand of Rs.10,000/-

for starting seed shop. But mother has not specified manner of ill treatment. Thus, according to learned counsel, evidence of PW1 Sk. Shamim and PW2 Bismillabi is not inspiring confidence and is not worthy of credence. He pointed out that, except parents, there is no other convincing evidence. He submitted that, even middleman, who was instrumental in arranging marriage and was Sarpanch of the village, has not been examined by prosecution. Likewise, learned counsel also criticized evidence of uncle PW3 Sk. Sandu and submitted that, he is resident of Demni Vahegaon. Even his evidence is about general and omnibus allegation. Consequently, it is submitted that, there is weak or no evidence on the point of cruelty.

7. As regards to offence of 306 of IPC is concerned, he submitted that, alleged consumption is of 19.08.2000, but there is no evidence to show that on that date or immediately prior to it, there was any abetment, inducement or instances of cruelty, which were of such nature that deceased was constrained to commit suicide. That apart, he submitted that, on autopsy, opinion was reserved. Autopsy conducted on 19.08.2000. He pointed out that, autopsy surgeon is not examined here. As C.A. analyzer received viscera on 31.08.2000 and not immediately on the day of autopsy. He further pointed out that, P.M. report was issued on the date of incident itself i.e. 19.08.2000 preserving viscera. He

further pointed out that, viscera is said to be received by analyzer on 31.08.2000 i.e. after more than 11 days and therefore, he questions the integrity of viscera report. He pointed out that, initially AD was registered and investigated. He further strenuously submitted that, from the spot panchanama (Exh.24), it is clear that there is no seizure of any insecticide or poison bottle. Therefore, according to him, even such material gives sever blow to the prosecution version regarding consumption of poison. He pointed out that, even CA report is issued on 23.01.2001. He also invited attention of the court through the analysis and would submit that, opinion is received that general and specific chemical testing did not reveal any poison in the blood of deceased. For all above reasons, he questions the manner of death to be suicidal and would point out that no final opinion has been obtained from autopsy surgeon. For all above reasons, he criticizes the conviction even under section 306 of IPC.

On behalf of Prosecution :-

8. In answer to above, learned APP while supporting the judgment, submitted that, parents are consistent about cruelty and ill treatment that deceased promptly reported about it to them and her uncle. That, parents and uncle are consistent. That, according to learned APP, the very aspect that accused nos.2 to 6 are acquitted for want of

evidence and there being convincing evidence against husband, there is indeed correct appreciation and as such no fault can be found in the appreciation of evidence and so she prays to dismiss the appeal for want of merits.

ANALYSIS

9. Charge at Exh.01 is for commission of offence under sections 498-A and 306 r/w 34 of IPC. Placing evidence of informant and mother in juxtaposition and on carefully comparing it, it is noticed that, marriage of deceased with appellant was of March 1997. Admittedly, there was a son born out of wedlock and cohabitation. It is noticed that, informant father in paragraph no.2 stated that, for a **period of six months**, his daughter was treated well. Then he stated that, after one and half year male child was born, but he again testified that, **after birth of male child**, accused nos.1 to 6 ill treated Nazirabi. He elaborated that, they were not providing her food, were getting work done without food and all six accused subjected her physical and mental cruelty by beating and by abusing her. He stated that, there was ill treatment to force her to bring Rs.10,000/- for setting up seed shop and **whenever** his daughter came, she disclosed above ill treatment and demand. Then he stated that, six months prior to the death, he had been to the house of accused to extend invitation of marriage of another daughter and requested them to send deceased with him, but they refused and at that time, **accused nos.1 to 4**

allegedly questioned him as to why he did not bring Rs.10,000/-. That, at the time of marriage, accused no.1 picked up quarrel with him and his wife on the count of 'Aher'. Then he stated that, after 4 to 5 months, he received news of consumption.

While under cross, in paragraph 4, he stated that, he is **unable** to give date, month and year, when his **daughter first disclosed** about ill treatment. Omission is brought that, at the time of marriage of second daughter, accused no.1 left with his daughter without attending the marriage. He admitted that, at the time of panchanama, he made no complaint against accused. Apparently, alleged consumption is of **19.08.2000** and report by him is of **20.08.2000** i.e. **on next day**.

10. On analyzing evidence of mother PW2 Bismillabi also, it is revealed that, according to her, deceased daughter was treated well for six months, but thereafter demand of Rs.10,000/- and ill treatment on that count. Even she deposed that, **whenever** her daughter came, she disclosed about ill-treatment. That, when husband PW1 went to fetch deceased daughter, she was not sent and at the time of marriage of second daughter, accused no.1 picked up quarrel on the count of 'Aher'. After five months, message of death of Nazirabi was received.

While under cross, she admitted that, accused were in relations prior to marriage. She admitted that, accused husband had been to attend marriage one day prior on the day of marriage. Even she is **unable** to state date, month and year, on which **daughter disclosed** about ill treatment and demand. Omission is brought about accused persons is not sending daughter for attending the marriage.

11. Therefore, on careful analysis of evidence, there are apparently general and vague allegations without specifying when the incidents took place, what was the form of ill treatment except stating that there was beating and abuses and who amongst 4 accused put up demand of Rs.10,000/-. Neither of them has stated about specifically appellant husband beating her. As stated above, they both are unable to give instances of alleged ill treatment. Though uncle is examined, even his evidence fails to inspire confidence for above similar reasons. Consequently, as submitted evidence on the point of 498A of IPC is apparently weak and fragile in nature.

12. As regards to offence under section 306 of IPC is concerned, there is burden on prosecution to establish the charges beyond reasonable doubt that there was abetment, inducement, instigation or any active role played by appellant husband to hold him responsible.

13. It is evident from the testimony of father that, since 4 to 5 months prior to alleged consumption, there was virtually no contact. Alleged consumption is of 19.08.2000. If husband is to be held responsible, then there has to be evidence suggesting maltreatment and cruelty, which was of such nature that she was constrained to take the extreme step of consuming poison. Admittedly, there is no iota of evidence in this direction. Further, as pointed out, thought case of prosecution is of consumption of poison, investigating machinery does not seem to have laid its hand on container of poison and this is evident from the spot panchanama at Exh.24. Further as pointed out that, autopsy surgeon has reserved opinion/report of analyzer, but report apparently received after a delay of almost four to five months also **does not show** detection of poison in the viscera. Therefore, charge and allegation of 306 of IPC regarding abetment to commit to suicide also comes under shadow of doubt.

14. Perused the judgment under challenge. Apparently, the view taken by the trial Judge singling out husband alone on same set of evidence and recording his guilt, is not supported by assigning sound reasons. Apparently, on same set of evidence, in-laws are acquitted. Allegations of 498-A of IPC do not fulfill the requirement as contemplated

in law. There is nothing to so hold husband alone responsible for abetting, inducing, instigating coercing Nazirabi to end up her life. Therefore, above aspects discussed in aforesaid paragraph do not seem to have considered by the learned trial Judge in proper perspective and evidence is not apparently appreciated with legal lens. Thus, indulgence at the hands of this court is necessary. Hence, the following order :-

ORDER

- I. The criminal appeal is allowed.
- II. The conviction awarded to appellant - Bashir Khan S/o Shabbir Khan Pathan in Sessions Case No.100 of 2001 by IIIrd Additional Sessions Judge, Aurangabad on 26.02.2004 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. Fine amount deposited, if any, be refunded to the appellant after the statutory period.

(ABHAY S. WAGHWASE, J.)