



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 209 OF 2004

Ganesh Bhagwanrao Karhade,
Age : 30 years, Occu : Service,
R/o. C/o S. V. Bedarkar, H. No. D-44,
Sanjay Nagar, Old Jalna, District Jalna Appellant

Versus

The State of Maharashtra Respondent

.....
Advocate for Appellant : Mr. Jaydeep Chatterji
APP for Respondent-State : Ms. Chaitali Chaudhari-Kutti
.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 28.11.2024

PRONOUNCED ON : 18.12.2024

JUDGMENT :

1. By invoking Section 374 of Cr.P.C., original accused husband, who alone is convicted for offence under Sections 498A and Section 511 r/w 313 of IPC, is hereby taking exception to judgment and order dated 10.03.2004 passed by IInd Ad-hoc Additional Sessions Judge, Beed in Session Case No. 90 of 1997.

CASE OF PROSECUTION

2. In nutshell, husband and in-laws of deceased Vaishali were chargesheeted on the premise that after one month of marriage, deceased was subjected to cruelty on account of failure to meet their demand of 10 tola gold agreed to be given at the time of fixing marriage. She was driven out of the house as above demand was not met. They were also keen in performing second marriage of husband and expected handsome dowry thereupon. It is also the case of prosecution that husband gave kick to deceased while she was in advanced pregnancy, resulting into bleeding and consequently, abortion. Getting fed up of the same, finally Vaishali immolated herself and hence the above implication by brother, resulting into registration of crime.

3. PW11 PI Kendre carried out investigation and after gathering evidence, charge-sheeted accused. At trial, prosecution adduced evidence of in all 12 witnesses. Defence also adduced evidence of 5 witnesses in support of their stand.

4. Learned IInd Ad-hoc Additional Sessions Judge, Beed appreciated the oral and documentary evidence and by judgment and order dated 10.03.2004, convicted accused appellant Ganesh for

offence under Sections 498A and 511 r/w 311 of IPC and he is acquitted from charge under Section 304-B of IPC. Rest of the accused are acquitted from all the charges.

Above judgment is now the subject matter of the appeal before this Court.

SUBMISSIONS

On behalf of the Appellant:

5. Learned counsel for appellant, pleading false implication, submitted that there are sweeping allegations without specifying or elaborating role of accused. He pointed out that on same set of evidence, accused Nos. 2 to 6 are already acquitted, however, without assigning sound reasons, husband alone is held guilty for offence which is not proved against him also. That, allegations raised are not substantiated, not there is any foundation or material by prosecution. He pointed out that even husband and other accused are already acquitted by learned Trial Court from charge under Section 304-B IPC.

6. Taking this Court through the evidence, more particularly that of brothers, mother, neighbour and so called friend of deceased, he pointed out that necessary ingredients of Section 498-A are palpably

missing. He would submit that allegations are levelled in plural manner. Distinct roles are not defined by anyone. He pointed out that the answers given by these witnesses in cross-examination itself show that implication is merely on account of annoyance of losing deceased. General allegations are raised alleging harassment without specifying its form. According to him, oral evidence falls short for attracting charge under Section 498-A of IPC. He also points out that charge of 511 r/w 313 itself gets disproved from prosecution's own witness i.e. PW9, who admitted that abortion was necessary and that deceased herself had consented for the same.

7. Lastly, he pointed out that admittedly, since January 1997, deceased was at her parents' place at Aurangabad. There was no communication or contact between deceased or accused till the episode of suicide by her on 19.02.1997. Therefore, for want of cogent, reliable and convincing evidence, he questions findings of learned trial court as regards to charge under Section 498-A is concerned. Similarly, in view of evidence of PW9, he also questions guilt recorded for Section 511 r/w 313 IPC. For all above reasons, he prays to allow the appeal.

On behalf of the Respondent-State :

8. Strongly opposing the above and supporting the conviction, learned APP submitted that, merely after a month of marriage, deceased Vaishali was maltreated and harassed for not receiving gold ornaments as per their expectations. Taking this court through the evidence of informant brother, other brother and mother, learned APP submitted that they are all consistent and supporting each other about harassment to Vaishali on above count and beating by husband on instigation of mother-in-law. Learned APP further submitted that they are all speaking about present appellant giving kick to deceased Vaishali during her pregnancy, which had resulted in bleeding and she was required to be taken to hospital. The impact of kick resulted into abortion. That, abortion was done against her wish. Therefore, offence of Section 511 IPC is squarely attracted. That, husband was not willing to have child from Vaishali and was rather keen in performing second marriage for greed of more dowry. Deceased had reported about it to her brother and mother and even her close friend and they have deposed to that extent. That, deceased was driven out of the house as their demand was not met. Only because of such treatment at their hands, and for refusing to take her back, she was

constrained to commit suicide. According to learned APP, accused being solely responsible for above offence, is rightly held guilty and hence, she prays to dismiss the appeal. She seeks reliance on two judgments i.e. ***Kamalakar v. State of Karnataka*** [Criminal Appeal No. 1485 of 2011 decided by the Hon'ble Apex Court on 12.10.2023] and ***Satish s/o Changdeo Kolhe and another v. State of Maharashtra*** [Criminal Appeal No. 453 of 2005 decided by this Court on 19.11.2024].

EVIDENCE BEFORE THE TRIAL COURT

9. In support of its case, prosecution has examined in all 12 witnesses. Their role and status and the sum and substance of their evidence can be summarized as under:

PW1 Dr. Arun Bapurao Shikhare, who is neighbourer of deceased, has deposed at Exhibit 55 as under.

“1.

2. *I am knowing incident taken place in his house, The same was nearabout 5 years back. On that day I was present in my house. The said incident taken place between 4 p.m. and 5 p.m. when I came in the door of the house of Chandrakantrao Kulkarni. After seeing the same, I went there. I made enquiries to what happened there. At that time, it was informed to me that younger daughter of Chandrakantrao Kulkarni set fire to*

hereself. Being the doctor it was requested to me to see her. Accordingly I entered into the said room and at that time there was a smoke in the said room. At that time when I entered I received smell kerosene from that place. At that time, it was noticed that the said room become blackish. At that time I saw the said girl was lying in the corner of the room. I saw the said girl was lying in the corner of the room. I saw her. At that time it was revealed that her body become blackish. Her legs and hands inside. I examined to her. At that time it was noticed to me that she is no more. Thereafter I came out of the said room and I informed to her father and mother about her death. At that time after receiving information it was revealed that they appeared in sad condition. At that time, she informed to me that there was harassment to their daughter at the hands of family members of her in-laws...”

PW2 Sunil Chandrakant Kulkarni is the brother of deceased Vaishali. Relevant portion of his evidence at Exhibit 56 is as under :

“1. Vaishali is my younger sister. In the year 1999, marriage of Vandana was performed. In marriage, she is given to Aurangabad. Marriage of Vaishali was performed with Ganesh Bhagwanrao Karhade.....

2. My sister Vaishali is no more. On 26th July, 1996, marriage of Vaishali was performed. The said marriage was performed at Aurangabad. As per the talks 8 tolas golden ornaments, all expenses of the marriage with salankrat borne by us. After marriage, Vaishali went to reside in the house of

her husband at Ambad. In Ambad, he husband and her mother-in-law was residing. Ganesh has got one brother and 4 sisters. Marriages of the sisters of the Ganesh performed. At the time of incident brother Ganesh was unmarried. Initially for about one month there was good treatment to my sister Vaishali. Thereafter Ganesh her mother-in-law Sunita, sister of Ganesh and her husband and sister of Ganesh Shaila and her husband started harassing to Vaishali. At that time, they started saying to Vaishali that at the time of marriage as per the talks 10 tolas golden ornaments have not been given to them. They said at that time, "Amhala Fesvile. Dusryachi Mulgi Keli Asti Tar Amhala Ek Lakh Rupai Hunda Milala Asta". At that time, mother-in-law of Vaishali used to say to Vaishali that she is not able to wear saree. She also said that Vaishali is not serving to her. Her mother-in-law used to instigate to Ganesh who is her husband. Thereafter, Ganesh used to beat her. When Vaishali used to visit Georai at that time, she used to inform about the harassment caused to her.

3. Thereafter, Vaishali become pregnant. Even thereafter the harassment at the instance of above said persons was going to Vaishali. Thereafter Ganesh gave a kick on the stomach of Vaishali. Thereafter Vaishali was taken to the Dawakhana from Jalna for the purpose of abortion without her consent. There was abortion of Vaishali. Prior to abortion, they forced her to walk as well as she was taken through bullock-cart. Due to that, there were severe pains to Vaishali. If there is a male issue to Vaishali then he will not be able to perform second marriage and he will not get dowry of Rs. 1 lakh.

4. On 5th January 1997, Ganesh, husband of Vaishali alongwith Vaishali and his sister Sunita and husband of Sunita came towards the house of my brother at Aurangabad. At that time, they said to my brother that as per the agreement gold was not given to them. At that time they said that they will not allowed Vaishali to reside along with Ganesh. At that time, they directed to my brother to look after and maintain Vaishali. I came to know to that effect as I was present there, 15 days thereafter my brother, my cousin brother Ratnakar Kulkarni and Dilip Patil my cousin brother-in-law went to Ambad. In Ambad, there was no meeting of Ganesh to them. Thereafter my brother and the abovesaid persons went towards the house of Vishwasrao, Sunladevikar brother-in-law of Ganesh who is residing at Ambad. Elder sister of Ganesh is the wife of said Vishwasrao Gugladevikar. At that time my brother and other persons requested to said Vishwas not to harass to my sister and maintain to her. At that time, the reasons to inform to said Vishwas as he is the brother-in-law of Ganesh and he will convince to that effect to the said Ganesh. At that time, the said Vishwasrao informed that within 2-3 days alongwith Ganesh he will come and will take Vaishali alongwith them. Thereafter they did not turn.

5. Thereafter, on 11th February 1997, Vivek, his wife, sister Vandana alongwith Vaishali went to Ambad. At that time they requested to Ganesh and his family members to take Vaishali in their house and not to harass to her. At that time, it was informed to my brother and other persons that as per the

agreement gold was not given to them and therefore they will not allow Vaishali in their house and accordingly, they driven my brother and other persons fro their house. Thereafter, Vaishali came to Georai. Vaishali always remain in tension. She always remains in worried condition. At that time, she was not taking the food in time and during whole night, she remains in wake up condition.

6. *Incident of Vaishali taken place on 19th February, 1997. On that day, I was in Georai. I was present in agricultural land. At about 4 p.m., I returned towards the house from agricultural land. At that time, my father informed to me that we have to go to Court. Thereafter, alongwith my father we went to Court. At about 5 p.m.,my neighbour Pralhad Patil came to Court. He informed to us to immediately come towards the house. Accordingly, we went towards the house. When we came near the house we saw full or rush near my house. After entering into the house, I saw my mother was weeping. Thereafter, I went towards inside room. At that time, I saw my sister in burning condition and she was dead.....*

PW3 Mandakini Chandrakant Kulkarni, mother of deceased, is examined at Exhibit 73. Her evidence is as under :

“1. Vaishali was my daughter. On 26th July, 1996, marriage of Vaishali was performed. Her marriage was performed with Ganesh Bhagwan Karhade. At the time of marriage it was agreed to give 8 tolas Gold ornaments, two sides clothes, fare

of bus and besides that we have to also spend over the said marriage. The said marriage was performed in Utsav Mangal Karyalaya, Aurangabad.....

2.After the marriage, Vaishali went to reside in her in-laws house at Ambad. Thereafter, for about 1 month she happily resided in her in-laws house. Thereafter her husband, her mother-in-law, two sisters of her husband i.e. Shaila and Sunita and their husbands started saying that at the time of marriage as per expectation gold ornaments have not been given to them. They insisted my daughter Vaishali to go to her parents house and bring more gold ornaments from them. At that time, they also used to say that if they would have performed the marriage of Ganesh with another girl then they would have received dowry of Rs. 1,00,000/-. By saying the above said persons started harassing and causing mental cruelty to Vaishali. Vaishali when came to my house at that time she informed to me to that effect and therefore, I came to know that effect. Vaishali when came to my house at the time of Mangalagaur at that time she informed to me that effect.

3. In Ambad, Vaishali, her mother-in-law and her husband used to reside. Two sisters of the husband of Vaishali always used to visit her house at Ambad. At that time, their husbands also used to come alongwith them. After informing Vaishali, I have understanding to her. That after the marriage, such things used to happen. Thereafter Vaishali after some days become pregnant. At that time, Ganesh do not want to have a child. The reason was that he did not like Vaishali. Ganesh always

used to quarrel with Vaishali. On one day, he gave a kick on the stomach of Vaishali. Ganesh taken Vaishali through bullock-kart and moved her. Due to the abovesaid reasons bleeding started to Vaishali. Thereafter, they taken Vaishali to Jalna and in Jalna they have done the abortion of Vaishali. I came to know to that effect when Vaishali was driven out of the house on 5th January, 1997 and brought her to Aurangabad.

4. *When Vaishali was brought to Aurangabad on 05-01-1997 at that time, she was brought by Ganesh Pradeep, Sunita, Umesh and Shaila. At that time, they will not allow Vaishali to cohabit with Ganesh. On that day, I was present in Aurangabad. My husband was also present there. At that time, we were there as treatment was going on to my husband at Aurangabad. Thereafter, for about 10 ti 15 dyas, we keep quited.*

5. *Thereafter my son Vivek, son-in-law, Deelip Patil and nephew Dr. Ratnakar Kulkarni went to Ambad. At that time, the abovesaid persons met to Vishwasrao Jogdladevikar who is brother-in-law of Ganesh, sister of Ganesh given to this Vishwas Jogladevikar. At that time they requested to Vishwasrao Jogladevikar to take Vaishali back to the house of Ganesh. At that time, they also requested to him to give proper treatment to Vaishali in the house of her in laws. At that time, the said Vishwas said to them that he will given understanding to Ganesh to that effect. At that time, he also informed that he will take Vaishali from my house for about 10-2 dayas we*

waited. Nobody came to take Vaishali to her in-laws house. Thereafter, my husband decided to send Vaishali to her in-laws house.

6. My son Vivek, his wife Smita, my elder daughter Vandana alongwith Vaishali went to Ambad on 11th February, 1997. they went to Ambad. On that day, I was at Georai. In Ambad, Vaishali as well as my son Vivek requested to take Vaishali back to her in-laws house. At that time, Vaishali also aksed to inform whether she has committed any mistake. At that time, she also repeatedly requested that she want to reside in her in-laws house. At that time, Ganesh, his mohter, his two sisters Shaila and Sunita and their husbands Pradeep and Umesh were present there. They refused to take Vaishali back and they drove Vaishali and other persons out of the house. Thereafter, Vaishali again came back to Georai. As Vaishali was driven out of the house, therefore, due to that she mentally disturbed. Due to that, she always thinking. Due to that she was also not taking food and she was also not taking sleep properly during night time. During that period, she in frightened condition used to woke up out of sleep.

7. When Vaishali was in my house at that time she informed to me. She informed that when she was in the kitchen at that time her husband started both the buttons of gas and went out of the kitchen locking the door and at that time he informed to her to ignite the said gas-stove. At that time, she also informed to me that after sometime, Ganesh opened the door of the kitchen and said to her, "if she want to

die then go to her parents house and die there. If she died here then he will loose his service". At that time, Vaishali informed to me that at that time it was actually tried to kill her.

8. *Incident of Vaishali taken place on 19th February, 1997. On that day, I was present in my house at Georai. My husband was present in the house in the morning. On that day, my son Sunil had been to the agricultural and on 19.2.1997, in the noon, we have taken a meal when after meal, we see there at that time, the issue of Grahashobhika of February was in the house. Vaishal read the said issue. At that time, there was information about the Swadhar Kendra in the said Grahashobhika issue. At that time, Vaishali informed to me that she wants to write a letter to the said Swadhar Kendra. At that time, I told her to write a letter. Thereafter, she wrote a letter. Thereafter, she informed to me to that effect. At that time, I did not saw the letter. She read over the contents to me. I saw the said letter. The same was written on the letter pad of her father in red colour ink. The said letter is at **Exh. 58**. Vaishali in the said letter have written about the ill-treatment and harassment which was to her in her in laws house. At that time, Vaishali was inside the house. I was cleaning the house. While cleaning the house, I came in the courtyard of the house. When I was cleaning the courtyard of the house, at that time, lneighbour Prahlad Patil and other 2-3 children while running came towards my house. At that time, they informed to me that full of smoke is coming out of my house. At that time, the informed to me that the smoke is coming from the backside room of my house. Immediately we rushed into the house. We*

went towards the said room. The siad room was locked from inside. At that time, the said Pralhad Patil gave fist blows and kicks on the door of the said room. Due to that the konda removed from its place and due to that the door of the said room opened. At that time, the sull smoke came out of the said room from the said door. At that time, I saw Vaishali was in burn condition. She was lying down there. At that time there was full of rush of people in the house. At that time, I informed to Pralhad Patil to bring my husband from the Court. Thereafter, Doctor came there and he saw the said Vaishali and then declared her dead. At that time, neighbouring Doctor Shinkhare came there who saw to the said Vaishali.

9. Vaishali due to harassment and illtreatment at the hands of the people from her in-laws was mentally disturbed and due to that she poured kerosene on her person and set fire to herself and committed suicide.

PW4 Vivek Chandrakant Kulkarni, brother of deceased, at Exhibit 78, deposed as under :

“1.Vaishali was my younger sister. I am the eldest in the family. When there was engagement of Vaishali at that time, I was present. At that time, it was agreed that we have to give 8 tolas gold. It was also agreed to spend on the clothes of bride and bridegroom by us. It was also agreed to give utensils etc by us and it was agreed to spend over the said marriage by us. Ganesh is an Engineer and at that time he was serving in Zilla Parishad at Ambad. At the time of engagement, there were

negotiation. At the time of marriage of Vaishali as agreed we have spend on it.

2. After the marriage for about 1 month, there was proper treatment to Vaishali. Thereafter, harassment started to her. At that time, it was started saying that it was agreed to give 10 tolas gold but only 8 tolas gold was given. It was also started saying that if the marriage of Ganesh would have performed with another girl then he would have get Rs. 1 lakh as dowry. At that time, Ganesh, his mother, his sisters Sunita and Shaila and their husbands used to harass and used to say to that effect. I came to know about harassment when Vaishali came to her parents house. At that time, she informed to me to that effect....

3. Thereafter, Vaishali went to the side in her in-laws house. When Vaishali was residing in Ambad at that time she become pregnant. At that time, accused used to say to Vaishali that if she gave birth to a male then there will be heir to the family and due to that there will be harassment to her. Thereafter, Ganesh gave a kick on the stomach of Vaishali. At that time, Ganesh forced her to walk and also forced her to sit in a bullock-cart and he moved to her through bullock-cart. Due to the abovesaid acts, there was bleeding to Vaishali. Thereafter, she was taken towards the hospital at Jalna and forcibly there wa her abortion. The same happen at the time of end of December 1996. Thereafter, on 4th January, 1997, Ganesh brought Vaishali to my house at Aurangabad and at that time, his two sisters i.e. Shaila and Sunita and their

husbands were alongwith him. At that time, they said to take our sister and also said when she was brought to my house at that time she informed to me about the incident of her abortion....

4. *Thereafter, myself, my cousin brother Dr. Ratnakar Kulkarni, and my cousin brother-in-law Deelip Patil went to Ambad. In Ambad, we went towards Advocate Ramrao Deshmukh who is very close to us. At that time, Pralhadsingh Thakur friend of Ramrao also came there. At that time, we send a message to Vishwasrao Jogdladevikar who is brother-in-law of Ganesh and called him towards the house of Advocate Ramrao Deshmukh. Accordingly, Vishwasrao Jogladevikar came there. At that time, we in detail informed to Vishwasrao Jogladeviakr. At that time, also informed to him how the said Vaishali was brought on 5th January 1997 to my house. At that time, Vishwas Jogladevikar said that he also came to know to all the women are looking after the family business. At that time, he also told that within 2-3 days he will send Ganesh to bring Vaishali back to his house. Thereafter, for some days, we waited but nobody turn.*

5. *Thereafter, on 11th February, 1997, myself, my wife, and Vaishali went to Ambad. We went towards the house of Ganesh. At that time, Ganesh, his mother, Shaila and Sunita and their husbands were present in the house. At that time, they drove from the house and they did not allow us to enter into the house. Thereafter, we returned from Ambad to Georai. Due to the abovesaid incident of Ambad, the said Vaishali was*

mentally disturbed. Due to that, the said Vaishali was not taking food and always remain in disturbed condition. Thereafter, from Georai, I went to Aurangabad.

6. Thereafter, on 19th August, 1997, I received telephonic call from my brother Sunil. At that time, he informed to me on telephone that Vaishali set fire to herself and committed suicide.

PW5 Dr. Vijay Gopikisan Sikchi - Autopsy Surgeon, at Exhibit 79 deposed that he conducted postmortem on 20.02.1997 in the morning at 7 a.m.. After deposing about external and internal injuries noticed by him, he gave opinion that the probable cause of death is due to cardio respiratory failure due to peripheril circulatory failure due to 100% superficial to deep burn. He identified the postmortem report to be at Exhibit 80.

PW6 Kalpana Milind Khade, friend of deceased, at Exhibit 84, deposed as under :

“1.I am knowing Vaishali Chandrakant Kulkarnir. I am knowing to her as hse is my friend since childhood. I was residing in Saraswati Colony, Georai. Vaishali was also residing in the same colony. Myself and Vaishali studied together upto 10th standard. In 11th and 12th standard, myself and as well as Vaishali were in the same collage but our side were different.

2. Marriage of Vaishali was performed in July 1996. In marriage, she was given in Ambad. At the time of marriage, for

one day, I came in order to attend her marriage. Thereafter, at the time of Diwali, I again came at that time, there was meeting of me and Vaishali. At that time, she informed to me that family members of her in-laws are harassing to her. At that time, she informed to me that they are insisting in order to bring 2 tolas gold from her parents. At that time, I asked her as to whether she informed to her parents to that effect. At that time, she informed to me that the parents are knowing to that effect. At that time I came to Georai from Latur and I was studying in 3rd year of my M.B.B.S.

3. Thereafter, in February, 1997, I again came to Georai. At that time, there was meeting of me and Vaishali. At that time, she informed to me that harassment is continued to her. She also informed to me that she is not taken to her in-laws house. At that time, she also informed to me that there was forcibly abortion to her. At that time, I was suppose to start my internal ship. Thereafter, on 4th February, 19997, my internalship started and I got posting at Beed.

4. I am knowing regarding the incident of Vaishali. The same taken place on 19.02.1997. At that time, I came to know that Vaishali poured kerosene on her person and set fire to herself. Police have recorded my statement regarding the incident of Vaishali....

PW7 Pralhad Sahebrao Patil, neighbourer of deceased is examined at Exhibit 85. Relevant portion of his evidence is as under :

“1.Incident of Vaishali taken place on 19.02.1997. On that day, after payment I was returning towards the house. At that time, I saw smoke was coming out of the northern side room of the bungalow of Chandrakantrao Kulkarni. Time was at about 4-4.30 p.m. At that time, mother of Vaishali was cleaning in the varanda of the house. At that time, I informed to her that smoke is coming out of her house. Immediately, myself and mother of Vaishali rushed towards the said room. The door of the said room was closed from inside. At that time, we tried to open the said door and for that purpose, gave a kick on it and due to that upper side obstruction removed from its place and the door of the room was opened. At that time due to that full of smoke came out of the door of the said room. At that time, I saw there and came to know that Vaishali was fallen down and was dead.”

PW8 Ramrao Dattatraya Deshmukh, relative of deceased, is examined at Exhibit 88.

PW9 Dr. Jyoti Magan Kalamkar, Medical Practitioner, who had conducted abortion of deceased Vaishali in December 1996. Relevant portion of her evidence is as under:

“1.I am having hospital by name Sushrusha Hospital. I am M.D. D.G.O.

2. On 24.12.1996, Vaishali Ganesh Karhade was admitted in my hospital. She was admitted in my hospital as she was pregnant and there was bleeding. As there was bleeding, therefore, there was her sonography. After sonography, it was

found that fetus was dead and the same was 14 weeks old. At that time, I advised to them for curetine. There are so many reasons for the purpose of missed abortion. It is one of the possibility that if the kick is given on the stomach of the pregnant woman then the trauma is developed and due to that, there is possibility of missed visible injury. Discharge card shown to me is in my own handwriting. In the said card, I have mentioned about the date of admission of the said Vaishali as well as her discharge from my hospital. The contents of the said card are true and correct. The same is at Exh. 91.

3. Police in connection of this case made inquiry with me. At that time, I have one letter to the police stating that which treatment I have provided to her when she was admitted in my hospital. The same was in writing informed by me. The said letter now shown to me is the same. It bears my signature. The contents were written as per my instructions. Contents are true and correct. The same is at Exh. 92.

PW10 Parshuram Dhote is the handwriting expert.

PW11 PW Pandit Kendre is the Investigating Officer.

PW12 Rajendra Deshmukh is the first Investigating Officer.

ANALYSIS

10. Including present appellant husband, in all six accused were chargesheeted and tried for commission of offence punishable under

Sections 498-A, 304-B, 313 r/w 34 of IPC. Learned trial Judge, on complete appreciation, already acquitted accused nos. 2 to 6 from all the charges and even present appellant husband is acquitted from charge of 304-B IPC, but is held guilty, and so convicted for offence under Sections 498-A and 511 r/w of 313 IPC.

11. On going through the record, it transpires that case of prosecution is rested on the evidence of in all 12 witnesses. Here, crucial evidence is of two brothers, out of whom, PW2 Sunil is the informant and PW3 Mandakini is the mother of deceased. Other witnesses include neighbour, so-called friend of deceased, medical experts, pancha to spot panchanama, handwriting expert and the Investigating Officer.

Charge under Section 498-A IPC :

12. PW2 informant Sunil, as regards to cruelty is concerned, has deposed in para 2 that, Ganesh, his mother, sister Sunita and her husband, another sister Shaila and her husband “started harassing” Vaishali saying that they are cheated and 10 tola gold ornament was not given. According to him, mother-in-law used to say that she is unable to wear saree; she is not serving her; mother-in-law instigated her husband and thereafter he beat her.

13. PW3 Mandakini, mother of deceased, in her substantive evidence at Exhibit 73 deposed that, after one month, husband, mother-in-law, two sisters and their husbands started saying that as per expectations, gold ornaments have not been given and they insisted Vaishali to go her parents' house and bring more gold. By saying that had they performed marriage of Ganesh with another girl, they would have received dowry of Rs.1,00,000/-, they were harassing her and causing mental cruelty.

14. PW4 Vivek, elder brother of deceased, in his substantive evidence at Exhibit 78 deposed that after marriage, for about one month, there was proper treatment to Vaishali. Thereafter harassment started. He said that, it was agreed to give 10 tola gold but only 8 tola was given and it was also stated that if marriage of Ganesh would have been performed with another girl, they would have got Rs.1,0,000- as dowry and this was said by husband, his mother, his sisters Sunita and Shaila, and their husbands used to harass.

Therefore, above is the oral account in support of charge of Section 498-A IPC, narrated by family members.

15. PW6 Kalpana, close friend of deceased, who is examined at Exhibit 84, deposed that when she met deceased at the time of Diwali, at that time deceased told that family members of her in-laws are harassing her and insisting her to bring 2 tola gold. Even in February 1997, she informed that harassment is continued.

16. Likewise, PW8 Ramrao, an acquaintance and friend of deceased's father in his evidence at Exhibit 88 deposed that, once deceased had come to his house while paying visit to daughter of Vishwas Kulkarni to go to a beautician. At that time deceased informed that there was harassment for less gold. She informed that husband beat and mother-in-law pulled her cheeks.

Summation of charge of Section 498-A :

17. On careful and meticulous re-appreciation of above evidence, it is patently emerging that both brothers and mother are merely using phrase that there was "harassment" for not giving gold. It is pertinent to note that, such close relatives of deceased are merely speaking about harassment without specifying form or nature of harassment. Here there are allegations against husband, mother-in-law, two sisters-in-law and their husbands also. However, distinct role of none of them has been defined by any of the two brothers or their mother.

Brothers are not uttering about mental cruelty as alleged by mother. Thus, witnesses are not consistent. Though there are allegations of harassment for not giving quantity of gold as agreed, however, there is no evidence about any previous talks during which it was settled that 10 tola gold was agreed and only 8 tola was given. PW8, who was party to the process of match making and settling the marriage, has not uttered about any agreement of giving 10 tola gold. Therefore, there is no evidence for namesake as regards to agreement of giving 10 tola gold by way of dowry. Though brother-informant and friend of deceased PW6 have deposed about hearing from deceased that husband used to beat her, when such instances took place is not stated by either of them. It is not a case of prosecution that in the backdrop of demand of gold, husband beat her, as neither of the witnesses specify about it.

18. There are series of judgments wherein Hon'ble Apex Court has repeatedly observed and held that in case of general, vague and omnibus allegations without specifying role or giving specific instances of cruelty, charge of Section 498-A would not automatically get attracted. Such observations are reflected in ***Kans Raj v. State of Punjab and others*** [Appeal (crl.) 688-90 of 1993 decided by the Hon'ble Apex Court on 26.04.2000]; ***State of Andhra Pradesh v. M.***

Madhusudhan Rao (2008) 15 SCC 582; *Neelu Chopra and another v. Bharti* (2009) 10 SCC 184; *Geeta Mehrotra Vs. State of U.P.* (2012) 10 SCC 741; *Bhaskar Lal Sharma and Anr. v. Monica and Ors* AIR 2014 SC (Supp) 1310; *K. Subba Rao v. The State of Telangana* ; (2018) 14 SCC 452 wherein, as to what constitutes offence under Section 498-A and when it can be said to be made out has been dealt and discussed.

Even very recently, the Hon'ble Apex Court, in the case of *Naresh Kumar v. State of Haryana* (2024) 3 SCC 573 observed that, to constitute offence of cruelty, there has to be incessant or continuous form of cruelty.

Likewise, in the case of *Yashodeep Bisanrao Vadode v. State of Maharashtra* (2024) SCC Online SC 2989, the Hon'ble Apex Court observed that, by way of evidence, specific acts and role of accused has to be demonstrated for attracting Section 498-A IPC.

Again, in the most recent case of *Dara Lakshmi Narayana and others v. State of Telangana and another* 2024 SCC Online SC 3682, the Hon'ble Apex Court observed, "mere reference to the names of family members in a criminal case arising out of matrimonial dispute,

without specific allegation, indicating their active involvement should be nipped in the bud”.

19. Therefore, in the line of above settled precedents, here it is reiterated that both brothers and mother as well as close friend of deceased, whose evidence is discussed above, are merely speaking about harassment to deceased. None of them has elaborated or given instances or nature of harassment. Marriage is of 1996. Deceased was back with her parents and brother since 05.01.1997. though unfortunately she committed suicide on 19.02.1997, learned trial court has already acquitted all accused including husband from charge of Section 304 IPC.

In the light of above discussion, here there is fragile and weak evidence in support of charge of Section 498-A IPC.

Charge under Section 511 r/w 313 IPC :

20. Section 511 and Section 313 of IPC, for ready reference, are reproduced as under :

“Section 511. Punishment for attempting to commit offences punishable with imprisonment for life or other

imprisonment.- Whoever attempts to commit an offence punishable by this Code with imprisonment for life or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall where no express provision is made by this Code for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence, or with both.”

“Section 313. Causing miscarriage without woman’s consent.- Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

21. Here, in support of above charge, case of prosecution is that, pregnancy of Vaishali was terminated against her wish and without her consent. There are also allegations by brothers and mother that husband gave kick on the stomach during her pregnancy, resulting into bleeding and further resulting into abortion. In support of such

charge, apart from oral evidence of brothers and mother, prosecution is also relying on evidence of PW9 Dr. Jyoti, a gynecologist, who was treating deceased since her pregnancy till her abortion. This court has already reproduced examination-in-chief of PW9 in aforesaid para. Now, below is the answers given by this medical expert in cross.

In cross PW9 admitted that carrying out abortion without consent of married or unmarried woman is an offence. That, she being doctor of repute, never conducts illegal abortions in her hospital. She admitted that while carrying out curetine, written consent was obtained from Vaishali and her husband Ganesh for that purpose. She admitted that at that time, Vaishali did not inform her that there was any violence on her body. Then, in para 5, she answered that Vaishali prior to 24.12.1996 used to visit her hospital for various tests and used to take medicines from her and she further admitted that since prior to 24.12.1996 she was knowing Vaishali and her husband Ganesh. That Vaishali obeyed instructions and took medicines prescribed by her. Para 6 contains general questions on the point of types of abortion. In para 7, she answered that in Exhibit 92, she opined that foetus was already dead and that if it was not taken out, there was danger to mother's life and that such procedure is called as curetine. She further answered and admitted that in present

case, it was absolutely necessary to perform curetine and therefore, Vaishali and her husband consented for the said purpose and therefore, she did the same.

22. In the light of above evidence of PW9, it is evident that, deceased underwent curetine as foetus was dead. PW9 in cross has candidly answered that she had obtained consent of Vaishali as well as her husband. She further admitted that Vaishali did not inform that there was any violence on her body. Therefore, such prosecution's own witness falsifies the versions of brothers and mother about bleeding due to kick by appellant husband. The very theory of performing abortion without her consent gets hit at the bottom itself in view of answer given by PW9 that, procedure was **done with consent of Vaishali** and rather, there being danger to the life of mother in view of dead foetus.

Taking above relevant testimony into account as regards to charge of Section 511 and 313 IPC is concerned, even said charge fails.

23. To sum up, here, firstly, there is no evidence that there was prior agreement of giving 10 tola gold, but only 8 tola being given,

resulting into discontent of husband and in-laws. Secondly, as regards to Section 498-A is concerned, allegations by family members are regarding harassment without specifying or elaborating its form and who amongst six accused inflicted it and when. Witnesses are merely speaking about hearing from deceased that husband beat, but on what count and when such instances took place is not stated by anyone. Visit of Vaishali to her parents' house after marriage is at the time of *Mangalagaur* and thereafter at the time of Diwali. Thus, there are only two visits. Brother in cross has admitted that husband accompanied for Diwali and this festival was celebrated. Deceased was back in the company of parents and brother since 05.01.1997. She met unfortunate death on 19.02.1997 while in the house and in company of parents and brother.

24. Likewise, evidence of PW9, an independent medical expert, more particularly her cross, inflicts severe dent to the prosecution story regarding commission of offence under Section 511 r/w 313 of IPC. Hence, for above reasons, both charges fail.

25. Perused the judgment under challenge. It is noticed that learned trial Judge has, on same set of evidence, acquitted all in-laws from all the charges. While recording guilt of husband alone,

availability of legal requirements for attracting Section 498-A as well as 511 r/w 313 of IPC has not been meticulously tested from the available evidence. Hence, for above reasons, interference is called for. Accordingly, following order is passed :

ORDER

- I. The appeal is allowed.
- II. The conviction awarded to the appellant by learned IInd Ad-hoc Additional Sessions Judge, Beed in Session Case No. 90 of 1997 under Sections 498-A and 511 r/w 313 of IPC on 10.03.2004 stands quashed and set aside.
- III. The appellant stands acquitted of the offence punishable under Sections 498-A and 511 r/w 313 of IPC.
- IV. The bail bonds of the appellant stand cancelled.
- V. Fine amount deposited, if any, be refunded to the appellant 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.]