



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 327 OF 2004

The State of Maharashtra

... Appellant

Versus

Ashok Mahadeo Kadam,
Age : 31 years, Occu. Agriculture,
R/o : Kanegaon, Taluka Lohara,
Dist: Osmanabad.

... Respondent

[Orig. Accused No.3]

.....

Mr. S. M. Ganachari, APP for the Appellant-State.

Mr. Satej S. Jadhav, Advocate for the Respondent.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 14.02.2024

Pronounced on : 21.02.2024

JUDGMENT :

1. The State has preferred instant appeal dissatisfied by judgment and order of acquittal of present respondent from offence punishable under Section 306 of the Indian Penal Code [IPC] in Sessions Case No. 97 of 2002 passed by learned 4th Adhoc Assistant Sessions Judge, Osmanabad on 12.02.2004.

2. Husband and in-laws of deceased Rajkumari, who committed suicide by consumption of poison, were challaned for commission of offence punishable under Sections 498-A and 306 r/w 34 of IPC on the specific allegation that, after marriage of deceased Rajkumari with

original accused no.3 Ashok, i.e. present appellant, barely six months thereafter, Rajkumari was subjected to harassment. There used to be continuous taunting and comments on her black complexion and for not conceiving. Accused also started to put up demand of Rs.50,000/- from her parents to pay the debt towards purchase of JCB machine. On account of non-fulfillment of demand, there was beating to her making her life miserable. Deceased used to inform her plight to her parents, who tried to give understanding to the accused, but all went in vain and beating and harassment continued. Finally, according to prosecution, when it became unbearable, Rajkumari consumed poison and succumbed to it on 06.08.2001 and therefore crime was registered, investigated and on gathering sufficient evidence, accused persons were chargesheeted and tried for offence under Sections 498-A and 306 of IPC.

3. At trial, prosecution adduced evidence of as many as 11 witnesses and sought reliance on documentary evidence like complaint, spot panchanama, inquest panchanama, postmortem report, CA report etc. After appreciating oral and documentary evidence, learned 4th Adhoc Assistant Sessions Judge, Osmanabad acquitted all accused persons from charge under Section 306 of IPC and husband alone is held guilty for offence under Section 498-A IPC.

4. Against such conviction under Section 498-A IPC, appellant preferred Criminal Appeal No. 20 of 2004 before learned Additional Sessions Judge, Omerga, who, by judgment and order dated 06.11.2004, quashed and set aside the same and appellant is acquitted even of the offence under Section 498-A IPC.

5. To establish its case, prosecution seems to have examined following witnesses :

PW1 Dr. Shendge is the doctor who treated deceased Rajkumari on her admission on 05.08.2001 on account of history of poisoning. His evidence shows that she was admitted by her husband Ashok i.e. present respondent, but she died on 06.08.2001.

PW2 Dr. Chanmalappa is another doctor who conducted postmortem and opined that death was due to consumption of insecticide, namely, rogor.

PW3 Shahaji is father, who lodged report Exhibit 41 and the sum and substance of his evidence is that his daughter was married with accused. For initial five to six months, everything was smooth but thereafter her husband started beating her whereas

remaining accused quarreled and abused her. There was taunting on her complexion and for not bearing child. He claims that his deceased daughter told that persons from her husband's house are demanding Rs.50,000/- as they had purchased JCB machine. According to him, in spite of understanding being given to the accused persons that he is poor and unable to pay the amount and not to ill-treat his daughter, ill-treatment and beating was continued. Thereafter, he deposed that, mother-in-law of deceased brought her to her parents' house and again made demand of Rs.50,000/-. That time his daughter stayed with them for about one and half months. Thereafter appellant husband came and took her with him on assurance of not quarreling and beating her.

He further deposed that, 15 days thereafter when he and mother of deceased went to the house of accused, they saw first wife of accused husband there and on questioning the same, accused husband beat their daughter in their presence. That, he requested accused not to beat her and returned back. That, same day in the evening he got news about consumption of medicine by his daughter and she was admitted in unconscious condition till her death. Therefore, he lodged report Exhibit 41.

His specific accusation is that due to harassment by all accused, his daughter consumed poison and committed suicide.

In cross He admitted that his daughter was second wife of accused husband Ashok. He also admitted that JCB machine was purchased jointly by Ashok and one Subhash Mali, Apparao Mali and Satish Lobhe and that it was purchased two years prior to the death of deceased Rajkumari. He admitted that he cannot give exact time, day and month when demand was made. He admitted that no complaint of beating was made even to the Sarpancha or Police Patil. He answered that his daughter was admitted in hospital by her husband.

PW4 Pandit, an acquaintance of both, accused and informant, did not support prosecution.

PW5 Kisan and **PW6** Govind, panchas to spot panchanama Exhibit 45, also did not support prosecution.

PW7 Rajkanya, sister of deceased, alleged that all family members used to harass her sister, taunt about her complexion and beat her and mentally harass her. That, they demanded Rs.50,000/- for JCB and when demand was not met, she was beaten by husband.

PW8 Kantabai, cousin maternal aunt of deceased and neighbour of accused stated that deceased suffered agony after four to five months of her marriage. She deposed that husband of deceased harassed her, beat her but this witness in examination-in-chief itself stated that she does not know the reason for the beating and harassment.

PW9 Chandrasen, an acquaintance and resident of the same village, did not support prosecution.

PW10 Bhagirathibai, mother of deceased deposed that after marriage, everything was smooth for six months, but thereafter there was mental harassment. There were comments and taunting on her complexion, about not bearing child and not being suitable to their house. There was also demand of Rs.50,000/- for purchase of JCB machine. Thereafter, one day they received message that their daughter was admitted and when they went, she was found unconscious.

In cross, she has denied that each time when her daughter came to her house, accused used to take her back. She admitted that daughter had no issues. She admitted that police had come for drawing panchanama of dead body and at the

time no complaint was made to the police. She admitted that she did not give statement to police that daughter does not have issues and there was harassment. Omissions are brought about husband beating by kicks and fist blows and about mental harassment.

PW 11 is the Investigating Officer.

ANALYSIS

6. On careful scrutiny of the above evidence, here, trial court has acquitted all accused except husband Ashok. However, he alone was held guilty, that too only for offence punishable under Section 498-A IPC, which conviction has also been set aside in appeal by learned Additional Sessions Judge, Omerga. Now, State is challenging the acquittal seeking his conviction under Sections 498-A and 306 of IPC.

7. On carefully re-appreciating the evidence of parents and sister, one does not come across any evidence to show that there was abetment, inducement or enticement by accused husband with sole intention that she should commit suicide and end her life. Taking into account the settled legal position, there is absolutely no evidence whatsoever on the point of abetment or inducement to commit suicide. What happened in proximity to the alleged consumption is

also not coming on record. Therefore, exactly for what reason there was consumption not getting established, prayers raised by prosecution for holding appellant guilty of the offence of 306 of IPC cannot be accepted. There is absolutely no evidence to convict him for offence under Section 306 IPC. Essential ingredients for attracting charge under Section 306 IPC being patently missing, prayer so raised cannot be granted.

8. So far as charge under Section 498-A is concerned, also there is no cogent, reliable evidence except bare allegations by parents and sister, without independent corroboration. Even PW8 Kantabai, cousin maternal aunt and neighbour of accused, was not having any knowledge about so called demand of Rs.50,000/-. She deposed about ill-treatment to deceased but is found silent on the cause for ill-treatment. Even there is variance in the version of parents on the point of beating to deceased in their presence. As per PW3 father, such incident occurred on the very day of consumption, however, PW10 mother deposed about deposed that beating occurred two to three days prior to consumption of poison. That apart, even if it is accepted that there was beating to deceased in presence of her parents, then question arises as to what prevented parents from promptly reporting the same. The incident of consumption is on

05.08.2001 and death is of 06.08.2001. Record reveals that relatives of deceased were present at the time of inquest and spot panchanamas which were drawn on 06.08.2001 itself. However, none bothered to lodge report even at such time. FIR came to be lodged next day i.e. at 14.15 hours on 07.08.2001. Hence, there is delay in lodging FIR which has gone unexplained.

9. Consequently, in the considered opinion of this court, even charge under Section 498-A of IPC has not been established. Learned Additional Sessions Judge, Osmanabad has rightly acquitted the appellant from the offence of 498-A IPC. There being no merit in the appeal, I proceed to pass the following order:

ORDER

The criminal appeal is dismissed.

[ABHAY S. WAGHWASE, J.]