



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 719 OF 2005

1. Santosh s/o Shrirang Maharnor
Age : 30 years, Occu : Agril.,
R/o Dhamangaon, Tq. Jamkhed,
Dist. Ahmednagar.
2. Shrirang s/o Kondiba Maharnor
Age : 65 years, Occu :Agriculture,
R/o as above.
**[Appeal abated against appellant no.2
as per court's order dated 19.10.2018.]**
3. Janabai Shrirang Maharnor,
Age : 59 years, Occu: Agril. & Household,
R/o as above.
4. Ushabai w/o Sainath Dhayagude,
Age : 34 years, Occu : Agril & Household.
R/o as above. ... Appellants

Versus

1. The State of Maharashtra
2. Lahu Rama Shinde
Age 48 years, Occupation Agri.
R/o Hiwra Pahadi,
Taluka and District Beed. ... Respondents

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Ms. Usha Wayal, Advocate for the Appellants.
Mr. D. R. Korade, APP for Respondent No.1-State.
Mr. D. G. Nagode, Advocate for Respondent No.2.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 15.10.2024
Pronounced on : 18.10.2024

JUDGMENT :

1. Convicts for offence punishable under Sections 498-A and 306 of the Indian Penal Code [IPC], are hereby challenging the judgment and order dated 30.09.2005 passed by Ist Adhoc Additional Sessions Judge, Ahmednagar in Sessions Case No. 101 of 2005.

PROSECUTION CASE IN BRIEF

2. In nutshell, case of prosecution is that, deceased Ashwini, i.e. daughter of PW2, was married to appellant no.1 five to six years prior to her death. Informant father set law into motion reporting that, one year after marriage, there was ill-treatment to deceased at the hands of husband, parent's in law and sister-in-law on the count of not doing household work and for not giving proper honours to their son-in-law. Accused persons beat his daughter. Whenever she came, she reported the above treatment meted out to her. 8 to 9 months prior to her death also she had reported ill-treatment and harassment when they had all met in the marriage of informant's nephew Pandurang. Ashwini reportedly left house of accused for gathering fuel wood, but did not return and on being searched, her dead body was found hanging to a tree. Therefore, vide report Exhibit 36, crime was registered and it was investigated by PW6 and accused came to be chargesheeted and tried vide Sessions Case No. 101 of 2005.

3. At trial, prosecution adduced evidence of as many as 6 witnesses and relied on documentary evidence like postmortem report, FIR, spot panchanama etc. After appreciating the evidence, learned trial Judge accepted the case of prosecution for commission of offence under Sections 498-A and 306 of IPC and sentenced appellants to suffer imprisonment as spelt out in the operative part.

Feeling aggrieved by the said judgment and order of conviction, present appeal has been preferred.

SUBMISSIONS

On behalf of the appellants :

4. Learned counsel for the appellants would, at the outset, introduced the appellants that, appellant no.1 is husband, appellant no.2 is father-in-law, appellant no.3 is mother-in-law and appellant no.4 is sister-in-law. She further pointed out that appellant no.2 father-in-law is no more and therefore appeal stands abated as against such appellant.

5. Taking this court through the evidence of PW2, PW3, PW4 and PW5, she would submit that apparently case of prosecution is weak and does not meet essential ingredients for attracting any of the

charge. She submitted that PW2 and PW5, who are parents, are levelling vague, general and omnibus allegations and are merely deposing about ill-treatment and harassment without quoting the instances or providing details as to, of what kind there was ill-treatment, when and in what form? She pointed out that their testimonies are also full of material omissions, inconsistencies and contradictions and in fact they both are not lending support to each other in spite of being parents of deceased. From their evidence, she questions that, it is suspicious also as to when they got knowledge about alleged maltreatment because, according to learned counsel, mother PW5 Salubai deposed about hearing from daughter whenever she came to paternal home, and she did not specify regarding her visits, whereas, father PW2 speaks of learning from daughter when they went to meet her. Thus, according to learned counsel, parents are not consistent. She pointed out that, even otherwise allegations are of trivial nature as they speak about not giving honour and not doing household work. Therefore, according to her, this itself would not amount to cruelty and does not fit in the legal requirements for attracting Section 498-A IPC.

6. She pointed out that apparently, from the evidence of parents, it is emerging that there is no unlawful demand also. She pointed out

that in the entire married life, only two instances are quoted. Therefore also, she submits that, there is no continuous harassment which is contemplated by law. She pointed out that from their evidence, it is also emerging that there is gap of 9 months during which there are no allegations of any nature i.e. about harassment and ill-treatment. That, informant himself has admitted that he is unable to give date and time of alleged ill-treatment and when it was learnt. Resultantly, it is her submission that prosecution has miserably failed to establish the charge of Section 498-A IPC.

7. She further pointed out that even there is delayed FIR without assigning any plausible reasons for the delay of 48 hours. Therefore, according to learned counsel, there was ample scope for concocted version reported to police out of annoyance. She submitted that even material witnesses, whose statements were recorded during A.D. inquiry, are not examined. Their evidence would have extracted the truth behind the alleged suicidal death.

8. Learned counsel next took this court through the evidence of PW3 Meera and would submit that she is a child witness and prosecution alleges that she was put up with accused to take care of the newborn of deceased. Learned counsel pointed out that this

witness has never reported PW3 or PW4 about any maltreatment, beating, which is directly alleged by the parents while in the witness box and that too, after death. She pointed out that she being child witness, was vulnerable to tutoring. Therefore, her evidence cannot be straightway accepted.

9. Learned counsel next submitted that another witness PW4 Rambhau, who is uncle, has no personal knowledge and he has further admitted that FIR is upon due deliberation. That, evidence of important witnesses i.e. parents PW2 and PW5 is not correctly appreciated by learned trial court. The answers given by PW2 in cross, more particularly para 5, which is full of material omissions, contradictions, has been overlooked by learned trial Judge. Moreover, in para 8 and 11, PW2 has categorically admitted that husband used to frequently come to take deceased which suggests that husband was keen in having company of deceased, and as such, there was no discord on account of any demand.

Resultantly, learned counsel submits that evidence has not been correctly appreciated by learned trial Judge. Therefore, according to learned counsel, said judgment cannot be said to be legal, just and sustainable and hence, prays for indulgence by allowing the appeal.

On behalf of the State and the Informant :

10. Per contra, learned APP as well as learned counsel for respondent no.2, also took this Court through the evidence of PW2, PW3, PW4 and PW5 and would submit that they are all consistent about ill-treatment and harassment. Their evidence has remained unshaken on material count. Prosecution story has not been disturbed. Only because of ill-treatment, deceased committed suicide while she was in the house of accused. There was no other reason for suicide. Only because of ill-treatment, she committed suicide and hence learned trial court committed no error in accepting the case of prosecution as proved and hence, it is prayed that appeal be dismissed for want of merits.

EVIDENCE BEFORE THE TRIAL COURT

11. The role and status of the six witnesses examined by prosecution, and the sum and substance of their evidence is as under:

PW1 Narayan acted as pancha to spot panchanama Exhibits 33 & 34.

PW2 Lahu is father of deceased. His evidence at Exhibit 35 is that his daughter Ashabai was married to accused Santosh. After marriage, her name was changed and she was addressed as

Ashwini. For one year, she was treated properly. Thereafter there was ill-treatment by husband and in-laws on the ground that she was not doing household work and because they were not honouring son-in-law. Accused beat her. She narrated whenever they went to her house. She also told that there was ill-treatment for not knowing cooking. When she met at marriage of Pandurang in village Dhamangaon, i.e. 8 to 9 months prior to the incident, she again reported harassment at their hands, i.e. beating on the ground that she was not cooking properly. After said marriage, she accompanied him to his house. After half month, her husband and cousin father-in-law came to take her and they assured to give her proper treatment. His younger daughter Meera was sent with them to take care of the newborn. On Saturday night, around 3.00 a.m., husband, brother-in-law, cousin father-in-law and two-three persons came to inquire the whereabouts of his daughter and they all went in her search and her dead body was found hanging to a neem tree in the forest and therefore he lodged report.

While under cross, following omissions are brought,

“daughter Ashwini told that accused persons were ill-treating her and beating her for not doing household work and they did not honour son-in-law when he came to them; that, accused persons were ill-treating his daughter because she does not know cooking properly and that time, accused were pacified.”

In further cross, he is unable to state the day, date, month and year when they went to the house of accused. He admitted

that accused persons were related to them since previously. He admitted that there was no dispute or quarrel amongst them and the accused persons on account of the honours in the marriage of Ashwini/Asha or thereafter. He admitted that his daughter was not desirous of getting married in the hilly area. He admitted that husband of Asha was loving her too much and therefore, he frequently came to take her back with him. In para 15, he admitted that previously he did not feel like lodging complaint to police because of the ill-treatment. He also admitted that on completion of funeral of his daughter at village Dhamangaon, they went back to their village Hiwra Pahade and he thereafter went to Jamkhed to lodge report. Rest is all denial.

PW3 Meera, a child witness, in her evidence at Exhibit 37 stated that Ashwini @ Asha was her elder sister. At the time of incident, she was taking education in 3rd standard and she went to reside with accused and her elder sister to take care of daughter of her elder sister. According to her, there was ill-treatment, beating and abusing to her sister by accused. On the day of incident, it was Saturday. She was present in the house. Her sister Ashwini went to village with her daughter to administer polio dose. She returned home late, due to which accused persons raised quarrel with her. Her mother-in-law and sister-in-law sent her for gathering fuel wood. Her husband beat her. After beating, she went to the forest to collect fuel wood, but she did not return home back. Next morning, she learnt that her sister had hanged herself.

Relevant cross of this witness is since para 6 onwards, wherein she answered that on Saturday, her brother-in-law Santosh had left for work in the morning. Similarly, father-in-law of Ashwini, namely, Shrirang went for grazing goats in the forest. Mother of Santosh, namely, Janabai was present but she was ill. She answered that her sister Ashwini came home at about 11.00 a.m. after giving polio dose to her daughter. She admitted that after 3.00 p.m., her sister Ashwini went to collect fuel and in the evening Santosh came back home after completing his work, whereas, father of Santosh also returned with goats. Sister of Santosh also came back home in the evening. She answered that Santosh came home and made inquiry about Ashwini and she told him that Ashwini had been to forest to collect fuel wood and that she had not come back. As Ashwini did not come home till late, Santosh searched to trace her. His brothers and relatives also searched for her. Santosh and other relatives also went to Hiwra Pahade by jeep and as Ashwini was not found there, her parents, maternal uncle and other relatives came to Dhamangaon. In cross para 7, she stated that corpse of Ashwini was found by her paternal uncle, police had been to Dhamangaon, and after funeral, they went back to village Hiwra Pahade via Jamkhed. Rest is all denial.

PW4 Rambhau, maternal uncle, in his evidence at Exhibit 38 deposed that after marriage, **his niece was treated properly for one month.** Thereafter her husband and in-laws ill-treated her

constantly. Those persons beat her and were not providing her meal and keeping her without food. This fact was disclosed by Ashwini to her parents as well as this witness whenever she came to paternal house. According to him, accused were ill-treating Ashwini **on the ground that accused and their relatives were not honoured**. Similarly, *sarees* were not purchased. They also ill-treated her for not cooking well and not doing household work properly. Nine months prior to the incident, she had come to parents' house and after 2 to 2 ½ months her husband and cousin father-in-law came and that time, they had taken Meera to take care of their child. Early morning on Sunday at 4.00 a.m., accused Santosh came with some persons and they all searched for Ashwini and her corpus was found hanging in the forest.

While under cross, in para 4, witness is unable to state date, date and month of he meeting Ashwini at Hiwra Pahade. He answered that he was thinking of lodging complaint for ill-treatment, but because of assurance given by accused, he did not lodge complaint. He admitted that after dead body was found, khabar was given to police. Till completion of funeral, he himself, parents of Ashwini and other relatives were present and even police were present. After funeral, they all went to Hiwra Pahade. There, at Hiwra Pahade, discussion amongst them took place in order to lodge complaint and then it was decided to lodge complaint. Rest is all denial.

PW5 Salubai, mother of deceased, in her evidence at Exhibit 39 testified that after marriage, her daughter Ashwini cohabited

well for 12 months. When she came to paternal house, she stated that accused were ill-treating and beating her on the ground that she is not cooking well, not doing household work properly, not honouring accused persons and not purchasing *sarees*. 8 to 9 months prior to the incident, they went to attend marriage at Dhamangaon. There also, Ashwini met and told about ill-treatment on same ground. She was brought back home and she stayed for 2 and ½ months. Her husband and cousin father-in-law came to take her back and they assured to give proper treatment to Ashwini. Her younger daughter Meera was sent along with Ashwini and her husband to take care of Ashwini's daughter. On Sunday morning at 4.00 a.m., accused Santosh, cousin father-in-law and other persons came to ask whether Ashwini had come there. Thereafter they all searched for her and her dead body was found hanging to a tree. According to her, above incident took place because of ill-treatment on the part of accused.

While under cross, in para 4, she too is unable to state the date, day or month when Ashwini came to their house. According to this witness, it was the month of Jeshtha, but she could not name the year. She admitted that they did not lodge complaint to police station regarding ill-treatment. In para 5, omission is brought about accused persons saying to her daughter that she cannot cook well. Rest is all denial.

PW6 PSI Govind Ashtrao is the Investigating Officer.

ANALYSIS

12. Here, conviction of appellants is recorded by learned trial Judge for offence punishable under Sections 498-A and 306 of IPC.

Charge under Section 498-A IPC :

13. As regards charge under Section 498-A is concerned, as to what actually constitutes cruelty has been lucidly and succinctly dealt in the landmark cases of *State of West Bengal v. Orilal Jaiswal* [(1994) 1 SCC 73], *Giridhar Shankar Tawade v. State of Maharashtra* (2002) 5 SCC 177; *State of Andhra Pradesh v. M. Madhusudhan Rao* (2008) 15 SCC 582; *Bhaskar Lal Sharma v. Monica* (2009) 10 SCC 604 *G. V. Siddaramesh v. State of Karnataka* (2010) 3 SCC 152 and *Gurnaib Singh v. State of Punjab* (2013) 7 SCC 108; *K. Subba Rao v. The State of Telangana* (2018) 14 SCC 452.

In *Girdhar Shankar Tawade* (supra), succinct enumeration of the object and ingredients of Section 498-A IPC is given as under :

"3. The basic purport of the statutory provision is to avoid "cruelty" which stands defined by attributing a specific statutory meaning attached thereto as noticed

hereinbefore. Two specific instances have been taken note of in order to ascribe a meaning to the word "cruelty" as is expressed by the legislatures: whereas Explanation (a) involves three specific situations viz. (i) to drive the woman to commit suicide or (ii) to cause grave injury or (iii) danger to life, limb or health, both mental and physical, and thus involving a physical torture or atrocity, in Explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury : whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of "cruelty" in terms of Section 498-A."

14. Bearing in mind the legal requirements echoed in above judgments and on sifting the evidence in the instant case, here, it is noticed that according to informant father PW2, for one year Ashwini was treated properly. Similarly, even mother PW5 speaks of proper treatment for 12 months. Thereafter, they alleged that, there was ill-treatment by husband and in-laws on two counts, i.e. not doing household work properly and secondly, not doing honours. However, according to informant, ill-treatment was because son-in-law was not properly honoured whereas according to mother, ill-treatment was

inflicted for not giving honours to all of them. Third reason for ill-treatment as alleged is that, she was not knowing cooking. As pointed out, neither of the parent is pointing out what was the form and nature of ill-treatment and by which of the accused, as here, there are four accused who faced trial. Informant's evidence shows that daughter reported ill-treatment when he went to see her at her matrimonial house, whereas according to PW5 mother, Ashwini reported ill-treatment whenever she came to parent's house. Therefore, as pointed out, regarding reporting about ill-treatment, parents are not consistent and their source of knowledge differs.

15. PW4 Rambhau, maternal uncle of deceased Ashwini, is giving totally different version as according to him, there was proper treatment only for one month. But his sister and brother-in-law have already stated about proper treatment for a period of one year. Even allegations attributed by him are not tallying with PW2 and PW5 as, according to him, there was beating, not providing meals and keeping her starved. This is not stated by either of the parents of Ashwini. He stated that, there was ill-treatment on the ground that accused and their relatives were not honoured properly and sarees were not purchased. But informant's evidence is silent on such count. Therefore, as regards ill-treatment is concerned, there is very weak,

feeble and inconsistent evidence. Even otherwise, about such alleged ill-treatment like, on the ground of not cooking properly and not doing household works, no specific instances are quoted, in spite of marriage being almost five to six years old.

16. Another crucial witness PW3 is younger sister of Ashwini and her evidence shows that she was sent to take care of child of accused Santosh and deceased Ashwini. But except stating general and omnibus allegations in her evidence in para 2 that there was ill-treatment, beating and abuses to her sister by accused, she has not stated that it was on the count of not preparing good food or not doing household work properly, as stated by others. In fact, this witness has stayed with deceased Ashwini. She had not reported her parents about any such ill-treatment even when they had been in search of Ashwini and after dead body was brought home. Apparently she is a child witness and though she denied that she was tutored, her version is also unworthy of credence as it is silent on crucial aspect of ill-treatment or its nature. Therefore, necessary ingredients for attracting Section 498-A are patently missing in the prosecution evidence.

Charge under Section 306 IPC :

17. Second charge with which conviction is recorded is Section 306 IPC. In umpteen judgments, Hon'ble Apex Court has time and again expounded legal requirements for attracting the charge of 306 IPC i.e. in the known cases, which are time and again referred to till date, and a few of them can be named as *State of West Bengal v. Orilal Jaiswal* (1994) 1 SCC 73; *Ramesh Kumar v. State of Chhatisgarh* (2001) 9 SCC 618; *Geo Varghese v. State of Rajasthan and another* (2021) 19 SCC 144; *M. Arjunan v. State, represented by its Inspector of Police*, (2019) 3 SCC 315; *Ude Sing & others v. State of Haryana* (2019) 17 SCC 301; *Gurcharan Singh v. State of Punjab*, (2020) 10 SCC 200; *Mariano Anto Bruno & another v. The Inspector of Police*, 2022 SCC OnLine SC 1387; *Kashibai & Others v. The State of Karnataka*, 2023 SCC OnLine SC 575; *Naresh Kumar v. State of Haryana* [Criminal Appeal (No.) 1722 of 2010 decided by the Hon'ble Supreme Court on 22.02.2024] and *Kumar @ Shiva Kumar v. State of Karnataka* [Criminal Appeal No. 1427 of 2011 decided by the Hon'ble Apex Court on 01.03.2024] 2024 SCC OnLine SC 216.

In *Kumar @ Shiva Kumar v. State of Karnataka* (supra) from para 60 onwards, the Hon'ble Apex Court has discussed the legal

aspect of abetment to suicide, as to what amounts to abetment as dealt under Section 107 of IPC and also, after discussing previous legal pronouncements in *M. Mohan v. State* (2011) 3 SCC 626; *Ramesh Kumar v. State of Chhattisgarh* (supra), *Chitresh Kumar Chopra v. State* (2009) 16 SCC 605; *Amalendu Pal alias Jhantu v. State of West Bengal* (2010) 1 SCC 707; *Rajesh v. State of Haryana* (2020)15 SCC 359 and *State of West Bengal v. Orilal Jaiswal* (supra), culled out a principle that, in order to prove guilt of accused for abetment to commit suicide, prosecution has to prove :

- (i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and
- (ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation.

Referring to the case of *Amalendu Pal* (supra), it has been observed in para 69 that :

69. ... this Court after referring to some of the previous decisions held that it has been the consistent view that before holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative to put an end to her life. It must be borne in mind that in a case of alleged abetment of suicide, there must be proof of direct or indirect act(s) of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the deceased to commit suicide, conviction in terms of Section 306 IPC would not be sustainable. Thereafter, this Court held as under:

13. In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.”

18. Keeping in mind the legal proposition settled by the above precedents, in the facts of the case in hand, it can be gathered from

the prosecution evidence that deceased went missing when she allegedly went to collect fuel wood, but did not return. Dead body was found hanging to a tree, suggesting suicidal hanging. PW3 Meera, younger sister of deceased, herself answered in cross that it was Saturday and after administering polio dose to daughter, around 3.00 p.m., her sister went to forest to collect wood. She in para 6 had already admitted that on that day, since morning, husband Santosh, father-in-law and sister-in-law had left the house for work and they had returned in the evening. Going by her such testimony, it is clear that when Ashwini left the house, at that time, husband, father-in-law and sister-in-law were not present. Only mother-in-law was present but she, according to this witness, was sick. PW3 did speak in examination-in-chief that Santosh beat her for coming late, but in cross, she has already stated that husband was out since morning for work. Therefore, there is no material suggesting any sort of overt act attributable to accused persons during the day when she left to collect wood. Unless there is active role attributable to them or material suggesting abetment, inducement or harassment which was of such nature that deceased was compelled to end up her life, charge of Section 306 IPC cannot be fastened. There is nothing to indicate that only because of harassment, ill-treatment or beating, deceased went and ended up her life. The necessary ingredients for attracting

Section 306 IPC are also patently missing from the prosecution evidence. Therefore, even this charge fails.

19. Perused the judgment under challenge. Learned trial court has apparently not taken into consideration the answers given by informant, his wife PW5 and even uncle, who have categorically admitted that they are unable to give date, day, time of instances of reporting cruelty. There are in-consistencies in the version of informant and his wife. Admittedly, phrase used by prosecution witnesses is that there was ill-treatment. However, there is no elaboration about its nature and no details or instances are quoted, still learned trial Judge has accepted the prosecution version. Learned trial court has also failed to appreciate that abetment, inducement or enticement to commit suicide is also not cogently established from the available evidence. As evidence as well as settled law is not applied, interference is called for to set aside the impugned judgment. Hence, following order is passed :

ORDER

- I. The appeal is allowed.
- II. The conviction awarded to the appellants by learned Ist Adhoc Additional Sessions Judge, Ahmednagar in Sessions Case No.

101 of 2005 under Sections 498-A and 306 of IPC on 30.09.2005 stands quashed and set aside.

- III. The appellants stand acquitted of the offence punishable under Sections 498-A and 306 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.]

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